





July 21

Sir Richard Betenson. Bart.

2^d Edit

56

THE
THIRD PART
OF THE
INSTITUTES

Of the Laws of England:
CONCERNING
High Treason, and other
Pleas of the Crown, and
Criminall causes.

ECCLES. 8. 11.

*Quia non profectur cito contra ma-
los sententia, absque timore ullo
fili hominum perpetrant mala.*

Inertis est nescire quod sibi liceat.

Author's Edw. Coke Milite, J.C.

Hæc ego grandævus posui tibi, candidè Lector.

MDCLX.

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of the Pleas of the Crown.

Multi multa, nemo omnia novit.

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DEO,
PATRIÆ,
TIBI.

A Proemie to the third part of the Institutes.

IN the Second part of the *Institutes* we have spoken only of Acts of Parliament, (*viz.*) of *Magna Charta*, and many ancient and other Acts of Parliament, which we have explained, and therein observed which of them are declaratory of the ancient Laws of this Realm, which are introductory of new, and which mixt: All of them (excepting a very few) concerning *Common Pleas*, and these two great Pronouns, *Meum* and *Tuum*.

In this Third part of the *Institutes* we are to treat *De malo*, *viz.* of *High Treason*, and other *Pleas of the Crown* and Criminal Causes, most of them by Act of Parliament, and some by the Common Law: in which Cases the Law of all other is most necessary to be known, because it concerneth the safety of his Majesty, the quiet of the Commonwealth, and the life, honour, fame, liberty, blood, wife and posterity of the party accused, besides the forfeiture of his lands, goods, and all that he hath: for it is truly said of these Laws, *Reliquæ leges privatorum hominum commodis prospiciunt, hæc regie majestati, subditorum vitæ, ac publicæ tranquillitati consulunt*. And that in these Cases the ancient Maxim of the Law principally holdeth, *Misera servitus est, ubi ius est vagum, aut incognitum*. And where some do object against the laws of England, that they are dark and hard to be understood, we have specially in these and other parts of the *Institutes* opened such windows, and made them so lightsome and easie to be understood, as he that hath but the light of nature, (which *Solomon* calleth the candle of Almighty God, *Prov.* 20. 27.) adding industry and diligence thereunto, may easily discern the fame. And that may be verified of these Laws, that *Lex est lux*, *Prov.* 6. 23. the Law it self is a light. See *Rom.* 2. 14. And when we consider how many Acts of Parliament (published in print) that have made new treasons and other capitall offences, are either repealed by generall or expresse words, or expired; how many Indictments, attainders of treasons, felonies and other crimes which are not warrantable by law at this day; and how few Book-cases there have been published of treasons, (though a subject of greatest importance) & those very slenderly reported: VVe in respect of the places which we have holden, and of our own observation, & by often conferences with the Sages of the law in former times concerning criminall causes or *Pleas of the Crown*, have thought good to publish this Third part of the *Institutes*, wherein we follow that old and sure rule, *Quod iudicandum est legibus, & non exemplis*. A work

See the 1. part of the Institutes, Sect. 500.

Malum non habet efficientem, sed deficientem causam. Evil hath not an efficient, but a deficient cause, by reason of the want of some vertue, or notable good.

Stamford.

A Proeme.

arduous and full of such difficulty, as none can either feel or believe but he only which maketh trial for it. And albeit it did often terrifie me, yet could it not in the end make me desist from my purpose, (especially in this work) so far hath the love and honour of my Countrey, to passe through all labours, doubts and difficulties, prevailed with me.

This, as other parts of the *Institutes*, we have set forth in our English tongue, not only for the reasons in the Preface to the first Part of the *Institutes* alledged, which we presume may satisfie any indifferent and prudent Reader: but specially this Treatise of the *Pleas of the Crown*, because, as it appeareth by that which hath been said, it concerneth all the subjects of the realm more nearly by many degrees then any of the other.

Bal. cont. 3. fo. 148.

Hereunto you may adde that which *Robert Holcote* an Englishman, surnamed *Theologus magnus*, upon the second Chapter of the book of *Wisdoms*, in or about the 20 year of King E. 3. wrote to this effect. *Narrant historia quod cum Williclmus dux Normannorum regnum Anglie conquisset, deliberavit quomodo linguam Saxoniam posset destruere, & Angliam & Normanniam in idiomate accordari, & ideo ordinavit quod nullus in curia regia placitaret nisi in Gallico, & iterum quod puer quilibet ponendus ad literas addisceret Gallicum, & per Gallicum Latinum, que dua usque hodie observantur. Hac ille.* But the statute of

35 E. 3. c. 15.

35 E. 3. c. 15. made not long after *Holcote* wrote, hath taken these edicts of a Conqueror away, and given due honour to our English language, which is as copious and significant, and as able to expresse any thing in as few and apt words, as any other native language that is spoken at this day. And (so speak what we think) we would derive from the Conqueror as little as we could.

When *Henry* the first died, all the issue male of the Conqueror and of his Sons were dead without issue male.

The wife of King H. 1. was *Mawde* daughter of *Malcolm* King of Scotland surnamed *Canmor*, & of *Margaret* his wife, who was the grandchild of *Edmond Ironside* King of England viz. The said King *Edmond* had issue *Edward* surnamed the *Que-law*, because he lived a long time beyond Sea with *Salomon* King of Hungary out of the extent of the laws of this Realm. *Edward* had issue the said *Margaret* his eldest daughter, famous for her piety and vertues she had issue *Mawde* wife of King H. 1. who by her had issue *Mawde*, of whose English blood by *Geffery Plantagenet* Earl of *Arjou* all the Kings of England are lineally descended.

We have in this Third part of the *Institutes* cited our ancient Authors and books of the Law viz. *Bracton*, *Britton*, the *Mirror of Justice*, *Flou*, and many ancient records, never (that we know) before published, to this end, that seeing the *Pleas of the Crown* are for the most part grounded upon, or declared by statute Laws, the studious Reader may be instructed what the Common Law was before the making of those statutes, whereby he shall know whether the statutes were introductory of a new law, declaratory of the old, or mixt, and thereby perceive what was the reason and cause of the making of the same, which will greatly conduce to the true understanding thereof.

We shall first treat of the highest and most hainous crime of *High Treason*, *Crimen Lese Majestatis*; and of the rest in order, as they are greater and more odious then others.

C. A. P.

CAP. I.

Of High Treason.



By the Statute of 25 E. 3. De prodicionibus, is declared in certain particular Cases, what offences shall be taken to be Treason, with this restriction, That if any other case supposed to be Treason should happen before any Justices, the Justices should take without going to judgement of the Treason, till the case be shewed before the King and his Parliament, whether it ought to be adjudged treason or other felony: therefore we will lay our foundation upon, and begin with that Act of Parliament, the Letter whereof in proprio idiomate ensueth.

25 E. 3. cap. 21

Auxint par ceo que divers opinions ont esté eues entre ceux heues gent des seignours & commons ad fait declarerment que ensuist. C'est assavoir, quant home fait compasser ou imaginer la mort nostre seignior le roy, madame sa compaignie, ou de leur fitz eigne & heire. Ou si home violast la compaignie le roy, ou leigne fille le roy nient marie, ou la compaignie leigne fitz & heire le roy. Ou si home leve guerre encontre nostre seignior le roy en son realme, ou soit aidant as ennemis nostre dit seignior le roy en son realme, dormant a eux aid ou confort en son roialme, ou par ayours & de ceo provablement soit atteint de overr. fait per gentz de leur condition. Et si home counterface le grand ou privee Seale le roy, ou sa monye. Et si home apport faux money en cest roialme counterface al money d'angleterre, si come la monye appelle * Lusheburgh, ou auten semblable a la dit money d'angleterre, sachant le money estre faux, pur merchander ou payerment faire en disceise nostre dit seignior le roy & de son peuple. Et si home tuast Chancelor, Tresurer, ou Justices nostre seignior le roy del un Banke ou de l'autre, Justices in Eire & de justes & tous autres Justices assignes de Over & Terminer * estendant ou leur places en sefant leur offices. Et soit a entendre que les cases susnommes doit estre adjudge treason, que se extont a nostre seignior le roy & sa royale majeste. Et de siel maniere de treason la forfeiture des escheates appartenant a nostre seignior le roy, cibien des terres & tenements tenus des antens, come de luy mesme.

Divers opinions.
Ad fait Declaris-
ment.

Nota, This is a Law for the most part Declaratory, but addeth also divers things to the ancient Law.

* Lusheburgh, alias Luxenburghs, were a kinde of base Coyn to the likeness of our English money, so called, because they were coined in Lusheburgh, which sometime was an Earldome, and after a Dukedome.

See Chaucer in the Prologue to the Monks Tale, the Host speaking to a lusty Monk, saith, God wot, as Lusheburghs pay ye, that is (upon the coherence of the Verse) No payment make ye that is not full and currant.

* Injuria illata judici seu locum tenentii regis videtur ipsi Regi illata, maxime si fiat in exercetie officium.

Item,

Item, **V** Hereas divers opinions have been before this time, in what Case Treason shall be said, and in what not; the King, at the request of the Lords and of the Commons, hath made a Declaration in the manner as hereafter followeth. That is to say, When a man doth compass or imagine the death of our Lord the King, of my Lady his Queen, or of their eldest Son and Heire: Or if a man do violate the Kings Companion, or the Kings eldest Daughter unmarried, or the wife of the Kings eldest Son and Heire: Or if a man do levy warre against our Lord the King in his Realm, or be adherent to the Kings enemies in his Realm, giving to them aid and comfort in the Realm or elsewhere, and thereof be provably attainted of open deed by people of their condition. And if a man counterfeit the Kings Great or Privy Seal, or his Money: and if a man bring false money into this Realm counterfeit to the money of England, as the money called Lusheburgh, or other like to the said money of England, knowing the money to be false, to merchandize or make payment, in deceit of our said Lord the King and of his people. And if a man slay the Chancellor, Treasurer, or the Kings Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear and determine, being in their place doing their offices. And it is to be understood, that in the cases above rehearsed, it ought to be judged Treason, which extend to our Lord the King and his Royall Majesty: And of such Treason the forfeiture of the escheats pertaineth to our Lord the King, as well of the Lands and Tenements holden of others, as of himself.

And albeit nothing can concern the King, his Crown and Dignity, more then *Crimen lēz Majestatis*, High Treason: Yet at the request of his Lords and Commons, the blessed King by authority of Parliament made the Declaration, as is abovesaid: and therefore, and for other excellent laimes made at this Parliament, this was called *Benedictum Parliamentum*, as it well deserved. For except it be *Magna Charta*, no other Act of Parliament hath had more honour given unto it by the King, Lords spirituall and temporall, and the Commons of the Realm for the time being in full Parliament, then this Act concerning Treason hath had. For by the Statute of 1 H. 4. c. 10. reciting that where at a Parliament holden 21 R. 2. divers pains of Treason were ordained by Statute, in as much as there was no man did know how to behave himself, to do, speak, or say, for doubt of such pains: It is enacted by the King, the Lords and Commons, that in no time to come any Treason be judged otherwise, then it was ordained by this Statute of 25 E. 3. The like honour is given to it by the Statute of 1 E. 6. c. 12. and by the Statute of 1 Mar. c. 1. Sess. 1. different times, but all agreeing in the magnifying and extolling of this blessed Act of 25 E. 3. Of this Act of ours we shall speak more hereafter. But to proceed to give a light touch how other Acts of Parliament have been called.

The Parliament holden at Oxford Anno 42 H. 3. was called *Infantum Parliamentum*, 12 E. 1. the Parliament of Whitehands, *Albarum Fibularum* or *Metellorum*, 5 E. 3. *Parlamentum bonum*, 10 R. 2. *Parlamentum quod fecit mirabilia*, that brought wonders, 21 R. 2. *Magnum Parliamentum*, 6 H. 4. *Parlamentum in doctum*, that leaues Parliament, 4 H. 6. *Parlamentum Fustum*, the Parliament of Waste, The Session of Parliament in An. 14 H. 8. called the Black Parliament. The Act of 1 E. 6. was called *Parlamentum pium*, the Pious Parliament. And the said Act of 1 Mar. *Parlamentum propitium*, the Mercifull Parliament. The Parliaments of Queen Elizabeth filed *Pia*, *justa*, & *provida*, The Parliament holden An. 21 of King James, called *Felix Parliamentum*, the happy Parliament,

ment, and the Parliament holden in the third year of our Sovereigns Lord King Charles, Benedicam Parliamentum, the blessed Parliament. The several reasons of these former Appellations appeare of Record and in History, and the latter are yet fresh in memory. At the making of the Statute of 1 E. 3. the High Courts of Justice were furnished with excellent men, viz. Sir William Shardhill Knight, (Worthly wittzen in Books Shard) Lord Chief Justice of the Kings Bench, and his Companions Justices of that Court; Sir John Stonor Knight, commonly wittzen in books Stone, Lord Chief Justice of the Court of Common Pleas, and his Companions Justices of that Court; and Gervase de Wilford, Lord Chief Baron of the Exchequer; men famous in their profession, & excellent in the knowledge of the Laws. At the making of the Statute of 1 H. 4. were Sir Walter Clopton Knight, Lord Chief Justice of the Kings Bench, and his Companions Justices of that Court; and Sir William Thirning Knight, Lord Chief Justice of the Court of Common Pleas, and his Companions Justices of that Court; and Sir John Cusse Knight, Lord Chief Baron of the Exchequer; men equal to any of their Predecessors in the knowledge of the Laws. At the making of the Statute of 1 E. 6. were Sir Richard Lister Knight, Lord Chief Justice of the Kings Bench, and his Companions Justices of that Court; and Sir Roger Cholmely Knight, Lord Chief Baron of the Exchequer; men of that excellency, as they were worthy of the name of the Worthies of the Law. At the making of the Statute of 1 Mar. were Sir Thomas Bromley Knight, Lord Chief Justice of the Kings Bench, and his Companions Justices of that Court; and Sir Richard Morgan Knight, Lord Chief Justice of the Court of Common Pleas; and his Companions Justices of that Court; and Sir D. Brook Knight, Lord Chief Baron of the Exchequer; men renowned for their great knowledge and judgement in their profession. All these we have named in the honour of them, and of their families and Posterities, for that they in their several times were great furtherers of these excellent Laws concerning Treason. In memoria eterna erit iustus. And all this was done in several ages, that the said Titles and Roles of the Crown might flourish, and not be faded by severe and sanguinary Statutes. But let us come to the Act itself, and for the better understanding thereof, and of the Book Cases, and other Records grounded upon the same, let us divide this Act concerning High Treason into several Classes or Heads, and then prosecute the same in order.

By compassing or imagining the death of the King, Queen, or Prince: and declaring the same by some overt deed.

The first concerneth Death,

Chancellor, and one
Treasurer, and one
Justices of the one
Bench, or other
Justices in Eyre, or
Justices of Assize, or
Justices of Oyer
and Terminer,

By killing and murder-
ring of the

The second concerneth Violation, that is, To violate, or Carnally to know

The Kings Consort, or Queen.
The Kings eldest Daughter unmarried.
The Princes Wife.

The third is Levying war against the King.

亞細亞

The fourth is adhering to the Kings enemies within the Realme or without, and declaring the same by some overt act.

The fifth is counterfeiting of

The Great Seal.

The Privy Seal.

The Kings Coine.

The sixth and last, by bringing into this Realme counterfeit money to the likeness of the Kings Coin, &c.

So as Treason is Membrum divinum, and these several Classes or Heads are Membra dividentia. And if the offence be not within one of these Classes or Heads, it is no Treason.

[Treason] is derived from [trahir] which is treacherously to betray. Trahe, Betrayed, and Trahison, per contractionem, Treason, is the betraying it self.

Delegit imbelles animos, nil fortiter audens

Proditio.

Inter leges Canonicas, 118. ca. 61. Proditiones blasphemice numerabantur inter scelera iure humano inexcusabilia. Treason is divided into two parts, viz. High Treason, Alta proditio, and into Petit Treason, Proditio parva. The Latin word used in Law is Proditio (a Prodere) and thereof cometh Proditor, which of necessity must be used in every Indictment of Treason, and cannot be expressed by any other word, Periphrasis, or Circumlocution.

[Ad fidei Declarament.] This Law is for the most part Declaratory of the ancient Law, and therefore this word [Declarament] is used. But per the famous Reader shall observe, that in divers Clauses it addeth to the former Law, whereunto this word [Declarament] will sufficiently extend.

[Quam Home, &c.] This extendeth to both Sexes, Homo including both Man and Woman. This Act is general, and therefore extendeth to some persons which claimed a privilege to be exempted from Secular Jurisdiction. (For example) Adam de Orleton Bishop of Hereford was indicted of High Treason for aiding the Mortimers, &c. with Men and Armour against King E. 2. &c. whereupon he was arraigned, and alledged, Se absque offensa Dei & Sancte Ecclesie, & absque licentia Domini summi Pontificis, non posset debere respondere in hac parte. And thereupon the Archbishops of Canterbury, York, and Dublin, and their Suffragans came to the Barre, claimed his privilege, and took him away; and he was to far from punishment, as he was after translated to Worcester, and after to Winchester. But this Statute (to clear all doubts) extendeth to all persons, * as well Ecclesiastical as Temporal, and so hath it ever since been put in execution, as hereafter in divers Cases it appeareth. See hereafter Cap. Murdre & Larceny.

A man that is non compos mentis, as shall be said more fully hereafter in the next Section, or an Infant within the age of discretion, is not (an home) within this Statute; for the principal end of punishment is, That others by his example may fear to offend. Ne pennis ad paucos, metus ad omnes perveniat: But such punishment can be no example to Mad-men, or infants that are not of the age of Discretion. And God forbid that in Cases so penal, the Law should not be certain; and if it be certain in case of Murder and Felony, a fortiori, it ought to be certain in case of Treason.

If a man commit Treason or Felony and confesseth the same, or be thereof otherwise convicted, if afterward he become De non sane memorie (qui parit exilium mentis) he shall not be called to answer. Or if after judgement he become De non sane memorie, he shall not be executed; for it cannot be an example to others.

And all Aliens that are within the Realm of England, and whose Soveraigns

* Rot. Romana. 17 E. 2. m. 6. Rot. Clauf. 1 E. 3. part. 1. memb. 13.

Artic. Cleri, 9 E. 3. cap. 15, & 16. Tr. 21 E. 3. coram Rege Rot. 173. Privilegium seculare non competit sedizioso equitanti cum armis, &c. secundum leges ecclesie.

25 E. 3. stat. 1. cap. 4. which was before this Act. Mich. 31 E. 3. coram Rege Rot. 55. Buck. Abbot de Milsey. See in the Chap. of Clergy in what cases the privilege of Clergy is taken away.

* To persons Ecclesiastical and Temporal. Bract. lib. 3. 120. 121, 134, 135. Britton 5. 18. Fleta cap. 23. 30. Mirror cap. 1. 5. cap. 2. 5. 11. de appeale de homicidio. 3 E. 3. cor. 383. 25 E. 3. 42. Cor. 139. 26 ass. 27. 3 H. 7. cap. 1. 3 H. 7. 1. 13. 21 H. 7. 31. Mar. Dier 140. Tr. 32 E. 1. Coram Rege 15. 8 E. 2. Coron. 369. 395. Cultum. de Norm. ca. 79. fo. 94, 95. 33 H. 8. cap. 20. 1 & 2 Mar. c. 10. To Aliens.

raignes are in amity with the King of England, are within the protection of the King, and do owe a locall obedience to the King, (are homes within this Act) and if they commit High Treason against the King, they shall be punished as Traytors; but otherwise it is of an Enemy, whereof you may read at large, Lib. 7. Calvins Case, fol. 6, &c. & 17, &c.

[Fait Compasser.] Let us see first what the compassing or imagining the death of a Subject was before, and at the time of the making of this Statute, when *Voluntas reputabatur pro facto*. And *Bracton* saith, that *Speculator voluntas & non exitus, & nihil interest utrum quis occidat, aut causam mortis præbeat*. So as when the Law was so holden, he must causam mortis præbere, that is, declare the same by some open deed tending to the execution of his intent, or which might be cause of death, as Justice Spigurnel reporteth a Case adjudged; That a mans wife went away with her Abowlerer, and they compassed the death of the Husband, and as he was riding towards the Sessions of Dier and Terminer and Gaol-delivery, they assaulted him and stroke him with weapons, that he fell down as dead, whereupon they fled: the Husband recovered and made Hue and Cry, and came to the Sessions and shewed all this matter to the Justices, and upon the warrant of the Justices they were taken, indicted and arraigned; and all this speciall matter was found by Verdict; and it was adjudged that the man should be hanged, and the woman burnt. And Sir William Beresford Chief Justice of the Common Pleas said, that before him and his Compagnions, Justices of Dier and Terminer and Gaol-delivery, a Youth was arraigned, for that he would have stoln the goods of his Master, and came to his Masters bed, where he lay asleep, and with a knife attempted with all his force to have cut his throat; and thinking that he had indeed cut it, he fled: whereupon the Master cried out, and his neighbours apprehended the Youth: and all this matter being found by speciall Verdict, in the end he was adjudged to be hanged, &c. *Quia * voluntas reputabatur pro facto*. So as it was not a bare compassing or plotting of the death of a man, neither by words or writing, but such an overt deed, as is aforesaid, to manifest the same. So as if a man had compassed the death of another, and had uttered the same by words or writing, yet he should not have died for it, for there wanted an overt deed tending to the execution of his compassing. But if a man had imagined to murder or rob another, and to that intent had become insidiator viarum, and assaulted him, though he killed him not, nor took any thing from him, yet was it felony, for there was an overt deed. But in those days, in the Case of the King, if a man had compassed or imagined the death of the King (who is the Head of the Common-wealth) and had declared his compassing or imagination by words or writing, this had been High Treason, and a sufficient overtture by the ancient Law. And herewith agree all our ancient Books. Glanvil saith, *Cum quis de morte Regis, &c. infamatur, &c.*

Bracton in the title *De criminibus læsæ majestatis*, *Ipse accusatus proloquutus fuit mortem regis*. And Britton fol. 16. *Grand treason est a compasser nostre mort*, and fo. 39. b. *Cyface lencusor son appeale, &c. que il oya mesme cœi John pur parler tiel mort, ou tiel treason, &c.* And Fleta saith in his title *De crimine læsæ majestatis*, *Si quis mortem regis ausu temerario machinatus fuerit, &c. quamvis voluntatem non perduxit ad effectum*. And the Mirror saith, *Crime de majestie est un peche horrible fait al roy, &c. p'ceux q occirent le roy, ou compassant a faire*. And it will be light you (in respect of reverend antiquity) to heare a president of an appeal (which then & after was in use) of High Treason, en pleine pliam, &c. en temps roy Edmond en cestes parolx. Rocelyn icy dit vers Waligrot illong q a tiel jour tiel anne del raigne de tiel roy, en tiel lieu vient celuy Waligrot a cœi Rocelyn, & luy trova destre en company, & en aide ensemblement ove Atheling, Tharkild, Ballard, & autres de faire prisonier, ou en tache pur occire nœi seignior le roy Edmond, ou en autre manner p coupe feloniousment, & a ceo faire fuer entreintes a ceo councei celer, & a ceo felony issint fornir solong lour poier. By all which it is manifest,

that

a See hereafter, cap. 73. Where and how *Voluntas reputabatur pro facto* by the ancient law, and the change thereof.

b Bracton, fol. c 15 E. 2. tit. Cor. 383.

d Note this word [compassed.]

* Sed hac voluntas non intellecta fuit de voluntate nudis verbis aut scriptis prolata, sed mundo manifestata fuit per apertum factum, id est, cum quis dederat operam, quantum in ipso fuit, ad occidendū, & sic de similibus e insidiator viarum.

See hereafter, ca. 5.

De Heretic.

25 E. 3. 42. 27 aff.

p. 38. 4 H. 4. ca. 2.

13 H. 4. 7. per

Gascoign.

But see 9 E. 4. fol.

26. Insidiator vi-

arum without tak-

ing of somewhat,

resolved to be no

felony.

V. lib. 11. fo. 29. b.

Al. Poulterers

Case. Vid. postea

cap. 16. Robbery,

in fine.

Glanvil lib. 14.

cap. 14. lib. 1. c. 2.

Bract. lib. 3. f. 118.

Britton fol. 16, &

39. b.

Note the word

Compasser.

Fleta lib. 1. c. 21.

Mir. cap. 1. §. 5.

cap. 2. §. 11.

Note this word

Compasser.

Mirror c. 2. §. 11.

De lappeale de

Majestie.

Rot. pat. 25 E. 3.

part 1. m. 16.

Vide Mic. 4 H. 4.

Coram Rege.

Rot. 22.

See hereof more

in the 57 Cha. of

Appeals.

Bracton, Britton,

Fleta, &c.

that compassing, machinating, counselling, &c. to kill the King, though it hath no other declaration thereof but by words, was High treason by the Common law. And so hereafter, verb. per overt fait, & de ceo provablement, &c.

Regula.

Mat. Par. pag. 41.
Holling. p. 26. b.
Mar. Westm.
W. Malmesbury.

Custum. de Nor.
cap. 14.

Vide inter Indi-
camenta de 17 E.

4 de Th. Burdittan-
sed judicandum.

est legibus, & non
exemplis.

23 Eliz. cap. 1.
Inter leges Al-

veredi, cap. 4.

Lib. 4. de 124. b.
Beverley Case.

Quid. salutes in
superis etiam for-

tuna luenda est:
Nec venium lafo

numine casus huius
bek. Reg. 17. de 124.

33 H. 8. cap. 10.
1 & 2 Ph. &

Mar. cap. 10.
4 Br. & 1. 3. fo.

118.
Britton cap. 8.

a disheriter.
Glauv. lib. 1. c. 2.

Fleta lib. 1. ca. 21.
Mirtor. c. 1. §. 5.

Vers. Roy de la
tr'o.

13 Eliz. cap. 1.
nota declared.

Brook tit. crea-
son 24.

1 H. 4. 1. 19 H.
6. 47. 13 H. 8. 12.

Vide infra verb.
¶ Per overt fait.

3 Mar. Dier 131.
pl. 7.

¶ **Fait compasser ou imaginer.**] So as there must be a compassing or imagination; for an act done per infortunium, without compassing, intent, or imagination, is not within this Act, as it appeareth by the expresse words thereof, Et actus non facit reum, nisi mens sit rea. And if it be not within the words of this Act, then by force of a clause hereafter, viz. & pur ceo que plusors auters, &c. it cannot be adjudged treason, untill it be declared Treason by Parliament, which is the remedy in that case, which the makers of the Law provided in that case. This compassing, intent, or imagination, though secret, is to be tried by the Juries, and to be discovered by circumstances precedent, concomitant, and subsequent, with all endeavour evermore for the safety of the King. This was the case of Sir Walter Tirrel a French Knight, who the first day of August Ann. 13. VVilliel. 2. Anno dom. 1100. being a hunting with the King in the New Forest, was commanded by the King to shoot at a Hart. Exiit ergo culum volatile, & obstante arbore in obliquum reflexum faciens, per medium cordis regem saucisvit, qui subito mortuus corruit.

It appeareth also by the Custumer of Normandy treating of treason, and the exposition of the same, that this act was not treason. To calculate or seek to know by setting of a figure or witchcraft, how long the King shall reign or live, is no Treason, for it is no compassing or imagination of the death of the King, within this statute of 25 E. 3. And this appeareth by the judgement of the Parliament in 23 Eliz. whereby this offence was made felony during the life of Queen Eliz. which before was punishable by fine and imprisonment. The ancient law was, that if a mad man had killed or offered to kill the King, it was holden for treason; and so it appeareth by King Alfreds law before the Conquest, and in lib. 4. in Beverlyes case. But now by this statute, and by force of these words, **Fait compasser ou imaginer** is more, he that is non compos mentis, and totally deprived of all compassings and imaginations, cannot commit High Treason by compassing or imagining the death of the King: for furiosus solo furore punior: But it must be an absolute madnesse, and a total deprivation of memory. And this appeareth by the statute of 33 H. 8. for thereby it is provided, that if a man being Compos mentis commit High Treason, and after accusation, &c. fall to madnesse, that he might be tried in his absence, &c. and suffer death, as if he were of perfect memory: for by this statute of 25 E. 3. a mad man could not commit High Treason. It was further provided by the said Act of 33 H. 8. that if a man attainted of treason became mad, that notwithstanding he should be executed. Which cruell & inhumane law lived not long, but was repealed, for in that point also it was against the Common law, because by intendment of law the execution of the offender is for example, ut poena ad paucos, metus ad omnes perveniat, as before is said; but so it is not when a mad man is executed, but should be a miserable spectacle, both against law, and of extreme inhumanity and cruelty, and can be no example to others. 4 Co. 124. b. *Bonaparte*

¶ **Mort.**] He that declareth by overt act to depose the King, doth a sufficient overt act to prove that he compasseth & imagineth the death of the King. And so it is to imprison the King, or to take the King into his power, & manifest the same by some overt act, this is also a sufficient overt act for the intent as foresaid. But peruse advisedly the statutes of 13 Eliz. cap. 1. 2. & 14 Eliz. c. 1.

¶ **Nrē seignior le Roy.**] These words extend to all his successors, as it hath been alwaies taken.

¶ **Le Roy**] Is to be understood of a King regnant, and not of one that hath but the name of a King, or a nominative King, as it was resolved in the case of

of King Philip, who married Queen Mary, and was but a nominative King, for Queen Mary had the office and dignity of a King, so as she that wanted the name of a King, but had the office and dignity, was within this Act of 25 E. 3. And he that had the name, and not the office and dignity of the King, was not within it. And therefore an Act was made, that to compass or imagine the death of King Philip, &c. during his marriage with the Queen, was Treason. A Queen regnant is within these words, [nre seignior le Roy] for she hath the office of a King.

1 & 2 Ph. & Mar.
cap. 10.

This Act is to be understood of a King in possession of the Crown and Kingdome: for if there be a King regnant in possession, although he be Rex de facto, & non de jure, yet is he seignior le Roy within the Purview of this Statute. And the other that hath right, and is out of possession, is not within this Act. May if treason be committed against a King de facto, & non de jure, and after the King de jure cometh to the Crown, he shall punish the treason done to the King de facto: and a pardon granted by a King de jure, that is not also de facto, is void.

Vide 11 H. 7. c. 1.

If the Crown descend to the rightful heire, he is Rex before Coronation: for by the Law of England there is no interregnum: and Coronation is but an ornament or solemnity of honour. And so it was resolved by all the Judges Hil. 1 Ja. in the case of Watson and Clark Seminary Priests: for by the law there is alwaies a King, in whose name the laws are to be maintained and executed, otherwise Justice should fail. Divers Kings before the Conquest voluntarily renounced their kingly office: And so did King H. 2. in the 16. year of his reign, and Henry his son was created and crowned.

4 E. 4. 1.
9 E. 4. 1, 2.

It appeareth by Britton, that to compass the death of the father of the King, is treason, and so was the law holden long after that: For after King E. 2. had dismissed himself of his kingly office and duty, and his son by the name of E. 3. was crowned, and King regnant, those cursed Catiffs, Thomas Gournay and William Ocle and others, were attainted of High Treason for murdering the Kings father, who had been King by the name of E. 2. and had judgement to be drawn, hanged, and quartered.

Hil. 1 Ja. in the
case of Watson
and Clark sem-
inary priests.
9 E. 4. 1. b.

The like judgement was given against Sir John Matrevers Knight and others, as being guilty of the death of the Kings uncle, Edmond Earl of Kent, which at that time (being so near of the blood royal) was by some holden also treason. But now this Act of 25 E. 3. hath restrained High treason in case of death, al nre seignior le Roy, la compaignie, & al eigne fuz, & heir le Roy.

See the preamble;
Auxins pur ceo
que divers opini-
ons oint estre eis
caux heures, que
gen case doit estre
dit treason, &c. in
quel case nait.
Rot. parlam.
4 E. 3. ann. 1.
Eodem Rot.
num. 32 & 4.

Nicholas de Segrave was charged in open Parliament in praesentia dñi Reg. comitum, baronum, & aliorum de consilio Regis tunc ibi existent, that the King in the warre of Scotland being amongst his enemies, Nicholas Segrave his liege man, and holding of the King by homage and fealty, served him for his aid in that warre, did maliciously move contention and discord without cause, with John de Crombwell, charging him with many enormous crimes, and offered to prove it upon his body. To whom the said John answered, that he would answer him in the Kings Court, as the Court should consider, &c. and thereupon gave him his faith. After Nich. withdrew himself from the Kings Host, and from the Kings aid, leaving the King amongst his enemies, in periculo hostium suorum, and adjourned the said John to defend himself in the Court of the King of France, and pressed him a certain day. Et sic quantum in eorum, subiciens & submittens dominium regis & regni subiectioni dñi regis Francie, ad hoc faciendum iter suum arripuit usque Doveriam, ad transfretandum, &c. All which the said Nich. confessed, & voluntati dñi regis de alto & basso inde se submisit. Et super hoc dñs Rex volens habere avisamentum Comitum, Baronum, Magnatum, & aliorum de consilio suo, in iunxit eisdem in homagio, fidelitate, & ligeancia quibus et tenebantur. quod ipsum fideliter consulerent, qualis poena pro tali facto sic cogito fuerit infligenda: qui omnes, habito super hoc diligenti tractatu & avisamento, consideratis & intellectis omnibus in praedicto facto contentis, &c. dicunt quod huiusmodi factum meretur amissionem vite & membrorum, &c. So as this offence was then solemnly in Parliament adjudged High treason. But this is

Plac. in Parlam.
E. 1. anno regni
sui 33. North.
Rot. 17. & 22.

taken away by this Act of 25 E. 3. being not under any of the classes or heads specified in this Act.

40 Aff. 25.

So piracy by any of the Kings subjects upon another, was taken to be treason before this Act, for so is the book to be intended, because a pirate is *Hollis humani generis*. But by this Act it is not now to be judged treason. See hereafter in the chapter of Piracy.

Britton cap. 8. and other ancient Authors *ubi supra*.

One doth marry a Queen regnant, if the husband compass the death of the Queen, and declare the same by overt act, he is guilty of treason, and punishable by this Act, for to this and many other purposes she is a distinct person by the Common law. And so if a Queen wife of a King regnant compass the death of the King, and declare the same by overt act, she is guilty of treason, & punishable by this act. So as (that we may speak it once for all) by these and many others that might be cited, (some whereof shall hereafter be touched) the preamble of this Act appeareth to be true, that divers opinions had been before the making of this act, what offences should be judged High treason, and what not.

Rot. parlia. 3 R. 2. num. 18.
See placita coram rege Hill. an. 3 R. 2. (Cavendish) rot. 8.
London Holl. chron. 3 R. 2. p. 422. 60. b. &c.
Monopoly.

This statute having restrained the compassing, &c. of death to the King, Queen, and Prince, it came to passe after the making of this Act, that in 3 R. 2. two Citizens of London, John Kerby Mercer, and John Algore Grocer, conceiving malice against John Imperial Janevois of St. Mary in Genoa that came as Ambassadour from the State of Genoa to the King, (under the Kings Letters of safe conduct, for alliance to be had between the King and the Duke and Commonalty of Genoa aforesaid) for that the said John Imperial had obtained a monopoly to furnish this land (keeping his staple at Southampton) of all such wares as came from the Levant, so plentifully as was to be had in all the west parts of Christendome, the said John Imperial was killed by them, as more at large appears by the record. And albeit the said John Imperial was an Ambassadour under the Kings safe conduct, and the killing of him was *justi belli causa*, yet the killing of him was no treason, because it was not under any of the said classes or heads, untill it was at that time declared by Parliament in these words, *Quel case examine & dispute inter les seigniors & commons, & puis m're al Roy en pleine Parliament, estoit il lonques devant n're seignior le Roy declares, determinus, & assensus, que tel fait, & coupe est treason, & crime de royall majestie blemye, en quel case il ne doit allowe a nulluy privileged del clergie: and accordingly the said Kerby and Algore were attainted of High treason in the Kings Bench, Hil. 3 R. 2. ubi supra. But this Declaration is taken away by the statute of 1 Mariz, as hereafter shall be said, and yet of this Declaration we shall make much use hereafter.*

nota his end.

2 Regum cap. 10.
4. 12. 31.
The killing of a foreign Ambassadour.
Honor legati, honor mittentis est, & proregis dedecus redundat in regem.

22 Aff. p. 49.
Mort dun Ambassad. le roy.

In the 22 year of E. 3. which was about 3 years before the making of this Act, one John at Hill had murdered A. de Walton the Kings Ambassadour, *punctum dñi regis miss. ad mandatum regis exequendum*: this was adjudged High treason, for which he was drawn, hanged, and beheaded, &c. For true it is, *quod legatus ejus vice fungitur à quo destinatur, & honorandus est sicut ille cujus vicem gerit, & legatos violare contra jus gentium est*. But by this Act of 25 E. 3. it is restrained to the death of n're seignior le Roy, and therefore *prorex* is not within this statute.

[**¶ Sa Compaigne.**] This word compaigne, (which is all one with consort or wife) was used, that compassing, &c. must be during the marriage with the King, for after the Kings death she is not *sa compaigne*, and therefore it extendeth not to a Queen dowager, and for this cause this word compaigne was used in this Act.

Britton *ubi supra*.

[**¶ Le fitz eigne & heire le Roy.**] The eldest Son and heir of a Queen Regnant is within this Law. Before this Statute some did hold, that to compass the death of any of the Kings Children, was Treason. But by this Act it is restrained to the Prince, the Kings Son, being heir apparent to the Crown for the time being: and he need not be the first begotten Son, for the

the second after the decease of the first begotten without issue, is Fitz eigne within this statute, & sic de ceteris. If the heir apparent to the Crown be a collateral heir apparent, he is not within this statute, untill it be declared by Parliament, as it was in the Duke of Yorks case.

Roger Mortimer Earl of March was in Anno Domini 1487 (11 R. 2.) proclaimed heir apparent. Anno 39 H. 6. Richard Duke of York was likewise proclaimed heir apparent. And so was John de la Poole Earl of Lincoln, by R. 3. And Henry Parquise of Exeter, by King Henry the eighth. But none of these, or of the like, are within the Purvien of this statute. And now that we have handled compassings and imaginations, let us proceed to the residue which concern Acts and Deeds.

¶ Heire is here taken for heir apparent, for he cannot be heir in the life of the Father.

¶ Si homo violast la compaigne le Roy.] The Mirrour saith, Crime de Majestie vers le Roy p ceux Avowterors q spergissent la feme le Roy. Whereby it appeareth that this was High Treason by the Common Law.

Violare is here taken for carnaliter cognoscere; and it is no treason, unlesse it be done during the marriage with the King, and extendeth not to a Queen Dowager as hath ben said. And if the wife of the King doth yield and consent to him that committeth this treason, it is treason in her.

¶ Ou la compaigne de lour fitz & heire.] This also extendeth to the wife of the Prince, during the coverture between them, and not to a Dowager: and if the wife yield and consent to him that commits this treason, it is treason in her.

¶ Heire.] Heire here is taken ut supra, for heir apparent.

Ou leigne file nient marie.] (That is) eldest daughter not married at the time of the Violation, albeit there had ben an elder daughter then she, who is dead without issue. * The Mirrour, Avowterors q spergissent la file le Roy eignes legitime, avant ceo q el soit marie.

And the reason that the eldest only is here mentioned, is, for that for default of issue Male, she only is inheritable to the Crown.

¶ Ou si home leva guerre enconter nostre seignior le Roy.]

* This was High treason by the common law, for no subject can levy war within the Realm, without authority from the King, for to him it only belongeth. See F.N.B. 113. a. Le Roy de droit doit sayer & defender son realme vers enemies, &c.

b A compassing or conspiracy to levy war, is no Treason, for there must be a levying of war in fact. But if many conspire to levy war, and some of them do levy the same according to the conspiracy, this is High Treason in all, for in Treason all be principals, and war is levied.

If any levy war to expulse Strangers, to deliver men out of prisons, to remove Counsellors, or against any statute, or to any other end, pretending Resoznation of their own heads, without warrant; this is levying of warre against the King: because they take upon them Royall Authority, which is against the King. There is a diversity between levying of war, and committing of a great Riot, a Rout, or an unlawfull assembly. c For example, as if three, or four, or more, do rise to burn, or pul down an inclosure in Dale, which the Lord of the Manor of Dale hath made there in that particular place, this or the like is a Riot, a Rout, or an unlawfull Assembly, and no Treason. But if they had risen of purpose to alter Religion established within the Realm; or Laws, or to go from Town to Town generally, and to cast down Inclosures, this is a levying of war (though there be no great number of the Conspirators) within the Purvien of this Statute, because the pretence is publick and generall, and not private

Mirrour ca. 1. §. 5.
Brit. c. 23. fo. 43. a.

33 H. 8. cap. 21.

Pasch. 28 H. 8. in
Spilmans Reports
in Case of Queen
Anne.

33 H. 8. ubi supra,
in case of Queen
Katherine.

* Mir. cap. 1. §. 5.
See Brit. cap. 23.
fo. 43. 44. & cap.
29. fol. 71.

1 Mar. Parl. 2. c. 1.

4 Glanvil lib. 1.

cap. 2. l. 14. c. 1.

Bracton lib. 3.

fol. 118.

Britton. f. 16. &c.

Fleta lib. 1. ca. 21.

Mir. ca. 1. §. 5.

b 1 Mar. 98. b.

Dier in Sic N.

Throgmortons

Case.

See 21 E. 3. 23.

21 R. 2. cap. Re-

peale.

1 H. 4. cap. 3.

8 E. 3. 29.

See hereafter,

cap. 73. against

going or riding

armed.

c See Rot. Parl. in

Cro. Epiphan.

20 E. 1. Rot. 23.

Humfrey de Bo-

huns Case. 4 Eliz.

210. b. Dier.

See the statute of

1 Mar. ca. 2. by

which, Grand

Riots in some

Cases be made

felony.

Pasch. 39 Eliz.
by all the Judges
of England, I
being Attourney-
General, and
present.

private in particular. And so it was resolved in the Case of Richard Bradshaw Miller, Robert Burton Hason, and others of Oxfordshire, whose Case was, That they conspired and agreed to assemble themselves with so many as they could procure at Enslow-Hill in the said County, and there to rise, and from thence to go from Gentlemans house to Gentlemans house, and to cast down Inclosures, as well for enlargement of High-wayes as of errable Lands. And they agreed to get Armour and Artillery at the Lord Norris his house, and to weare them in going from Gentlemans house to Gentlemans house for the purpose aforesaid, and to that purpose they perswaded divers others: and all this was confessed by the offenders. And it was resolved, That this was a compassing and intention to levy war against the Queen, because the pretence was publick within the Statute of 13 Eliz. cap. 1. (the Letter wherof herein shortly followeth,) and the Offenders were attainted and executed at Enslow-Hill.

And this diversity is proved by a latter Branch of this Act.

Et si per case ascun home de cest realme chimanche arme discovert secretment ave gents armes, contre ascun autre, pur luy tuer, ou disrober, ou pur luy prender, ou retainer tang il face fine, ou ransome pur sa deliverance, nest l'entencion le Roy & de son counsell, q'en tiel case soit adjudge treason, mes soit adjudge felony, ou trespasse, solung le ley del t're auncientment use. Wherby it appeareth, that bearing of armes in warlike manner for a private revenge or end, is no levying of war against the King within this Statute. So that every gathering of force is not High Treason. And so it was resolved in Parliament, in 5 H. 4. Rot. Parliam. num. 11, & 12. the Earl of Northumbrelands Case.

By the said Statute of 13 Eliz. cap. 1. it is enacted, declared, and established, That during the natural life of Queen Elizabeth, if any within the Realm or without, should compass, imagine, invent, devise, or intend to levy war against her Majesty, within this Realm or without, and the same declare by writing, or word, &c. that it should be High Treason. So during the life of the Queen, a conspiracy to levy war was High Treason, though no war were levied: and upon that law, Bradshaw, Burton and others were attainted of High Treason, for conspiracy onely to levy war. But it was resolved by all the Justices, that it was no Treason within the Statute of 25 E. 3. as hath been said. The words in this law are [levie guerre:] An actual Rebellion or Insurrection is a levying of war within this Act, and by the name of levying war is to be expell'd in the Indictment. If any with strength and weapons invasive and defensive, both hold and defend a Castle or Fort against the King and his power, this is levying of war against the King within this Statute of 25 E. 3.

It was resolved by all the Judges of England in the reign of King H. 8. that an Insurrection against the Statute of Labourers, for the inbanding of salaries and wages, was a levying of war against the King, because it was generally against the Kings Law, and the offenders took upon them the reformation thereof, which subjects by gathering of power ought not to do. It was specially found, that divers of the Kings subjects did minister and yield victuals to Sir John Oldcastle Knight and others, being in open war against the King, and that they were in company with them in open war; but all this was found to be pro timore mortis, & quod recesserunt quam cito potuerunt: and it was adjudged to be no Treason, because it was for fear of death. Et actus non facit reum, nisi mens sit rea. And therefore this in them was no levying of war against the King within this Act.

¶ Ou soit adherent as enemies nostre seigniour le roy, a eux donant aide & comfort en son roialme & aylors.]

¶ Adherent,] This is here explained, viz. in giving aide and comfort to the Kings enemies within the Realm or without; Delivery or surrender of the Kings Castles or Forts by the Kings Captain thereof to the Kings enemy within the Realm or without for reward, &c. is an adhering to the Kings enemy, and consequently Treason declared by this Act. b A. is out of the

Rot. Parl. 5 H. 4.
num. 11, 12.
13 Eliz. cap. 1. b.
The Indictments
and Attainders
of treason by
force of this Sta-
tute are not more
to be followed,
because the Sta-
tute, which made
them good, is
expired.
Dier. 3 & 4 Ph. &
Mar. 144.
10 E. 4. 6. i Mar.
Treason. ff. 24.
Ter. Mic. 8 H. 8.
Mich. 7 H. 1.
Coram Rege.
Heres. Rot. 30.
a Rot. Parl.
20 E. 1. num. 2.
John de Brimmes
Case.
Rot. Parl. 33 E. 1.
Rot. 8. Rob. de Ro.
de Werkes Case.
8 E. 3. 20.
38 E. 3. 31. a.
Parl. 4 R. 2. num.
17, 18, &c.
5 R. 2. T. Hall 54.
Hil. 18 E. 3. co-
ram rege. Rot.
145. Eborum.
43. Aff. 18. 42. Aff.
29.
Gilbert de M. was
a Scot.
Rot. Parl. 7 R. 2.
num. 17, 17, 24.
7 H. 4. 47. Cust.
de Norm. cap. 73.
b Vid. 13. Eliz.
Dier 298.

the Realm at the time of a Rebellion within England, and one of the Rebels flee out of the Realm, whom A. knowing his treason both aide or succour, this is no treason in A. by this branch of 25 E. 3. because the traytor is no enemy, as hereafter shall be said; and this Statute is taken strictly.

¶ **As enemies.]** Inimicus in legall understanding is hostis, for the subjects of the King, though they be in open war or rebellion against the King, yet are they not the Kings enemies, but traytors; for enemies be those that be out of the allegiance of the King. If a Subject joyn with a foraine Enemy, and come into England with him, he shall not be taken prisoner here, and ransomed; or proceeded with as an enemy shall, but he shall be taken as a traytor to the King.

¶ **An Enemy coming in open hostility into England, and taken, shall be either executed by Martiall Law, or ransomed;** for he cannot be indicted of treason, for that he never was within the protection or ligeance of the King, and the Indictment of Treason saith, *Contra ligeantiam suam debitam.*

¶ **David Prince of Wales levied war against E. 1. This was Treason,** for that he was within the homage and ligeance of the King, and had judgement given against him as a Traytor, and not as an enemy. And albeit in many precedents of Indictments, Subjects that be Rebels and Traytors, &c. be called *proditores & inimici*; yet within this Statute they are not inimici.

¶ **In the Duke of Norfolk's Case the question was,** a league being between the Queen of England and the King of Scots, whether the Lord Herise and other Scots in aperto praelio burning and waiking divers Towns in England without the assent of the King, were enemies in law within this Statute; and resolved that they were. See more hereafter in this third part of the Institutes, cap. 49. of Piracy, &c. upon the Statute of 28 H. 8. cap. 15.

¶ **On per ailors.]** That is to say, out of the Realm of England. But then it may be demanded, how should at this time this foraine treason be tried? And some of our Books do answer, that the offender shall be indicted and tried in this Realm where his land lieth, and so it was adjudged in 2 H. 4. But now by the Statute of 35 H. 8. cap. 2. (which yet remains in force) All offences made or declared, or hereafter made or declared treasons, misprisions of treason, and concealments of treason, committed out of the realm of England, shall be inquired of, heard and determined, either in the Kings Bench, or before Commissioners in such Shire as shall be assigned by the King. If it be before Commissioners, it hath been commonly used, that the King doth write his name in the upper part of the Commission. But in the Case of Patrick O Cullen an Irishman, the Queen did put her signature to the Warrant to the Lord Keeper, and not to the Commission: * and it was holden by the Justices that the one way and the other was a sufficient assignment by the King within the Statute of 35 H. 8.

¶ **It was resolved by all the Judges of England, that for a treason done in Ireland the offender may be tried by the Statute of 35 H. 8. in England,** because the words of the Statute be, All Treasons committed out of the Realm of England, and Ireland is out of the Realm of England. And so it was resolved in Sir John Parrots Case. And our word here [per ailors] is as much as out of the Realm of England. See Pasch. 2 H. 4. coram Rege Rot. 8. Salop. Treason in Wales.

¶ **All treasons done upon the Sea shall be inquired, heard and determined in such Shires and places of the Realm as shall be limited by the Kings Commission,** in like form and condition as if the same had been done upon the land, &c. after the common course of the lawes of this land. And by the preamble it appeareth, that it could not be tried by the Common law, but by the Civil law before the Lord Admirall. See hereafter in the exposition of the Statute of 28 H. 8. cap. 15. & infra, cap. 49.

See hereafter, 35 H. 8. cap. 2.

6 43 Aff. 28, 29.

33 H. 6. 1.

19 E. 4. 6. a. & b.

4 Mar. Treason.

Br. 32.

1 Mar. ibid. 24.

21 E. 3. 23.

22 Aff. p. 49.

13 El. Dier 298.

Ex libro de Grif-

fin. de Perkin

Werbeck.

d Dier 4 Mar.

fol. 145. a.

Lib. 7. fol. 6. b.

Calvins Case.

e Fleta lib. 1. c. 16.

f Mich. 13, & 14

Eliz. per Justice.

19 E. 4. 6. b.

18 H. 6. cap. 4.

20 H. 6. cap. 1.

5 27 E. 3. cap. 13.

31 H. 6. cap. 4.

7 E. 4. 14. 13 E. 4.

9. 21 E. 3. 16, 17.

Regist. 129. Fir.

N. B. 114.

h 4 Aff. pag. 15.

5 R. 2. ubi supra.

19 E. 4. 6. b.

Dier 3 Mar. 132.

Pasch. 2. H. 4. cor-

ram rege.

Rot. 8. Wallia.

35 H. 8. cap. 2.

3 Mar. ubi supra.

13 Eliz. Dier 298.

Stanford Pl. Cor.

fo. 90. a. & b. See

the first part of the

Institutes, 440.

* Hil. 36 Eliz. in

the Case of Patrick

O Cullen, for a

Treason at Brus-

sels in partibus

transmarinis.

i 33 El. in Or-

nick's case lib. 7.

f. 23. Calvins case.

Vid. Dier Mich.

19 & 20. Eliz. fo.

360. lib. 11. fol. 63.

in Doct. Fosters

Case.

k 28 H. 8. cap. 15.

This Act concern-

ing Treasons is

not taken away by

the Statute of

35 H. 8. cap. 2.

Vide infra cap.

49. fo. 181. of

Piracy, &c.

Vid. 5 Eliz. 5. c. 5.

¶ Et

¶ Et de ceo provablement soit attaint per overt fait per
gents de leur condition.] In this branch four things are to be observed.

4 See 1 E. 6. ca. 12.
the last clause.
5 E. 6. cap. 11.
1 & 2 Ph & Mar.
cap. 10. & 11.
1 Eliz. cap. 6.
13 Eliz. cap. 1.
Stanf. pl. Cor. 89.
& 164.
Br. coron. 4 Mar.
220.
Dier 2 Mar. fo. 99.

¶ First this word [provablement] probably, that is, upon direct and manifest proof, not upon conjecturall presumptions, or inferences, or strains of wit, but upon good and sufficient proof. And herein the adverb [provablement] probably hath a great force, and signifieth a direct and plain proof; which word the King, the Lords and Commons in Parliament did use, for that the offence was so heinous, and was so heavily and severely punished, as none other the like, and therefore the offender must probably be attained, which words are as forcible as upon direct and manifest proof. Note, the word is not [probably] for then commune argumentum might have served, but the word is [provably], be attained.

* Rot. parli. an. 33.
E. 1. Rot. 6. Jo.
Salvyns calc.
6 43. A. 11. 28.
8 E. 3. 20.

7 H. 4. 27. 34 E. 3.
cap. 12. Lib. 4.
fo. 57. the Sadlers
calc.

* 29 H. 6. cap. 1.

2. This word [attain] necessarily implieth that he be proceeded with and attained according to the due course and proceedings of law, and not by absolute power, or by other means, * as in former times had been used. And therefore if a man doth adhere to the enemies of the King, or be slain in open war against the King, or otherwise dye before the attainder of treason, he forfeiteth nothing, because (as this Act saith) he is not attained: wherein this Act hath altered that which before this Act, in case of Treason, was taken for Law. And the statute of 34 E. 3. cap. 12. saves nothing to the King, but that which was in esse, and pertaining to the King at the making of that Act. And this appeareth by a judgement in Parliament in Anno 29 H. 6. cap. 1. That Jack Cade being slain in open rebellion could no way be punished, or forfeit any thing, and therefore was attained by that Act of High treason.

Vide supra verbo
¶ Morr. fo. 6.

Vide 21 R. 2. cap.
3. but it is repeated
by 1 H. 4. ca. 3.
* Hil. 36 Eliz.
Doctor Lopes
calc. 13 Eliz. c. 1.
Brook. Treason
24.
Hill. 1 Ja. R. Lo.
Cobhams Case.

3. ¶ Per overt fact,] per apertum factum, This doth also strengthen the former exposition of the word [provablement] that it must be probably, by an open act, which must be manifestly proved. As if divers do conspire the death of the King, and the manner how, and thereupon provide weapons, powder, * poison, assay harness, send letters, &c. or the like, for execution of the conspiracy. Also preparation by some overt act, to depose the King, or take the King by force and strong hand, and to imprison him, untill he hath yielded to certain demands, this is a sufficient overt act to prove the compassing & imagination of the death of the King: for this upon the matter is to make the King a subject, and to despoil him of his kingly office of royal government. And so it was resolved by all the Judges of England, Hil. 1 Jac. regis, in the case of the Lo. Cobham, Lord Gray, and VVatson and Clark Seminary Priests: And so had it been resolved by the Justices, Hil. 43 Eliz. in the case of the Earls of E. and of S. who intended to go to the Court where the Queen was, & to have taken her into their power, and to have removed divers of her Counsel, and for that end did assemble a multitude of people; this being raised to the end aforesaid, was a sufficient overt act for compassing the death of the Queen. And so by wofull experience in former times it hath fallen out, in the cases of King E. 2. R. 2. H. 6. & E. 5. that were taken and imprisoned by their subjects. And this is made more plain by the legal form of an indictment of treason. For first it is alledged according to this Act, Quod * proditorie compassavit & imaginatus fuit mortem & destructionem dñi regis, & ipsum dom. regem interficere, &c. In the second part of the indictment is alledged the overt act, & ad illam nephandam & proditoriam compassionem, imaginationem, & propositum suum perficiend & perimplend and then certainly to set down the overt fact for preparation to take and imprison the King, or any other sufficient overt act, which of necessity must be set down in the Indictment. Whereby it appeareth how insufficient many indictments were of High treason, where in it was generally alledged, that per apertum factum compassavi. & imaginatus fuit mortem dom. regis, &c. * For example, Termo Mic. anno 5 E. 6. Edward Duke of Somerset was indicted before Commissioners of Oyer and Terminer in London, quod ipse deum 12 oculis suis non habens, sed instigatione diabolica

* In ancient time
traditione & felonice,
parl. 33 E. 1.
rot. 6. Robert de
Ros his case, but
now proditorie is
necessarily required.
Vide Britton fo.
16 and 19. 1 Mar.
Br. treason 24.
* Ter. Mic. 5 E. 6.
Lib. Inrr. Coke
fol. 482.
Sanguinis O male-
dicta sui, &c.

lica seductus, apud Holborn in parochia Sancti Andreæ infra civitatem London, viz. 20 die Aprilis anno regni domini Regis Edw. sexti quinto, & diversis diebus & vicibus antea & postea falsè, maliciose, & proditorie * per apertum factum circumvixit, compassavit, & imaginavit cum diversis aliis personis prædictum dominum Regem de statu suo regali deponere & deprivare, &c. Which Indictment and all others of like form were against Law, as hath been said: and of the matter of this Indictment that noble Duke was by his Peers found not guilty. But then it may be demanded, for what offence he had judgement of death, and 2. what Law made it an offence. The offence appeareth in his Indictment, for the former part thereof contained High treason, whereof he was acquitted, and the latter part contained one only offence of felony (whereof he was found guilty) in these words, Et ulterius Juratores præd. præsentant, quod præfatus Edwardus dux Somerset Deum præ oculis suis non habens, sed instigatione diabolica seductus, 20 Maii An. regni dicti Dom. Regis Edwardi sexti quinto supradicto, ac diversis aliis diebus & vicibus antea & postea, apud Holborn in præd. paroch. Sancti Andreæ in civitate London, & apud diversa alia loca infra civitatem London præd. felonice ut felo dicti Dom. Regis per aperta verba & facta procuravit, movit & instigavit complurimos subditos ipsius domini Regis ad insurgendum, & apertam rebellionem & insurrectionem infra hoc regnum Angliæ movend' contra ipsum dominum Regem, & ad tunc & ibid. felonice ad capiendum & imprisonandum prænobilem Johannem comitem Warwick de privato consilio domini Regis ad tunc existent', contra pacem dicti domini Regis, coronam & dignitatem suam, & contra formam statuti in huiusmodi casu editi & provisi. The statute whereupon this indictment was intended to be grounded, was the branch of the Statute of 3 & 4 E. 6. by which it is provided, [That if any person or persons by ringing of any Bell, &c. or by malicious speaking or uttering of any words, or making any Outcry, &c. or by any other deed or act, shall raise or cause to be raised or assembled any persons to the number of 12 or above, to the intent that the same persons should do, commit, and put in ure any of the acts or things above mentioned (whereof to take and imprison any of the Kings most honourable Privy Councell was one) and the persons to the number of 12 or above so raised and assembled after request and commandement (in such sort as in that Act is prescribed) shall make their abode and continue together, as is aforesaid, (in the Act) or unlawfully perpe- trate, do, commit, or put in ure any of the acts or things abovesaid, that then all and singular persons, by whose speaking, deed, act, or any other the meanes above specified, any persons to the number of 12 or above shall be raised or assembled for the doing, committing, or putting in ure any of the acts or things above mentioned, shall be adjudged for his so speaking or doing a felon, and suffer execution of death as in case of felony, and shall lose his benefit of Sanctuary and Clergy.] Hereby it doth manifestly appeare, that the truth concerning this Noble mans attainder and execution in divers things is contrary to the vulgar opinion, and some of our Chronicles, and in some points contrary to law. First, that for the felony made by the said branch of the said Act he could not have had his Clergy, for Clergy in that Case is expressly ousted by the said Act. 2. That he was not indicted for going about, &c. the death of the Earl of Warwick, then of the Kings Privy Councell, but only for his taking or imprison- ment, and therefore could not be indicted upon the Statute of 3 H. 7. as some have imagined. 3. That the Indictment is altogether insufficient, for it pursueth not the words or matter of the said branch of the said Act, as by comparing of them it manifestly appeareth; which (we being desirous that truth may appear in all things) we have thought good upon this occasion to adde for advancement of truth. 4. That being but attainted of felony, he could not by law be beheaded, as elsewhere we have shewed. And this Act that created the felony saith, that such a felon shall suffer execution of death, as in case of felony. 5. Lastly, this whole Act was justly holden to be a doubtfull and dangerous Statute, and therefore was deservedly repealed. And after the fall of this Duke, see the preamble of the Statute of Subsidie of 7 E. 6.

* Per apertum factum.
Vid. hereafter cap. 5. de Heresie, generall Indictments against Lollards, &c.

The residue of the Indictment of the Duke of Somerset.

To take and imprison one of the Privy Councell, Contra formam Statut.
3 & 4 E. 6. cap. 5.

3 H. 7. cap. 14.

Lib. 9. fo. 114. in Seignior Sanchars case.

1 Mar. cap. 12.
1 Eliz. cap. 16.
7 E. 6. cap. 12.

And

And now to return to cases of High Treason. If a man be arraigned upon an Indictment of High Treason, and stand mute, he shall have such judgement, and incurre such forfeiture, as if he had been contited by *Verdict*, or if he had confessed it. For this standeth well with this word provablement, for *factur facinus qui judicium fugit*: but otherwise it is in case of Petit Treason, Murder, or other Felony.

If a subject conspire with a foraine Prince beyond the Seas to invade the Realm by open hostility, and prepare for the same by some overt act, this is a sufficient overt act for the death of the King, for by this Act of Parliament in that Case there must be an overt act. * *Qui capiti aut saluti Regis perfidiose sine solus, sine servis aut sicariis mercede conductis stipatus, insidiabitur, vita & fortunis ejus omnibus privator.* So as thereby an overt act was required.

The composition and connerion of the words are to be observed, viz. [thereof be attainted by overt deed.] * This relateth to the severall and distinct treasons before expressed, (and specially to the compassing and imagination of the death of the King, &c. for that it is secret in the heart) and therefore one of them cannot be an overt act for another. As for example; a conspiracy is had to levy war: this (as hath been said, and so resolved) is no treason by this Act untill it be levied, therefore it is no overt act or manifest proof of the compassing of the death of the King within this Act; for the words be (*de eo, &c.*) that is, of the compassing of the death. For this were to confound the severall Classes, or *membra dividentia, & sic de cæteris, &c.*

* Divers latter Acts of Parliament have ordained, that compassing by bare words or sayings should be High Treason: but all they are either repealed or expired. And it is commonly said, that bare words may make an Heretick, but not a Traytor, without an overt act. And the wisdom of the makers of this law would not make words only to be treason, seeing such variety amongst the witnesses are about the same, as few of them agree together. But if the same be set down in writing by the Delinquent himself, this is a sufficient overt act within this statute.

^b Cardinal Pool, albeit he was a subject to H. 8. and of the Kings blood, (being descended from George Duke of Clarence, Brother to King E. 4.) yet he in his Book of the Supremacy of the Pope, written about 27 H. 8. incited Charles the Emperour, then preparing against the Turk, to bend his force against his naturall Sovereign Lord and Countrey; the writing of which Book was a sufficient overt act within this statute: and to move the Emperour the rather in that Book, he made H. 8. almost as ill as the Turk, in these words, *In Anglia sparsum nunc est hoc semen, ut vix à Turcico internosci queat, idque auctoritate unius coaluit.*

^c In the preamble of the statute of 1 Mar. concerning the repeal of certain Treasons, &c. it is agreed by the whole Parliament, that lawes justly made for the preservation of the Common-wealth without extream punishment, are more often obeyed and kept, then lawes and statutes made with great and extream punishments; and in speciall, such lawes and statutes so made, where by not only the ignorant and rude unlearned people, but also learned and expert people minding honesty, are oftentimes trapped and snared, yea, many times * for words only, without other fact or deed done or perpetrated: therefore this Act of 25 E. 3. both provide, that there must be an overt deed. But words without an overt deed are to be punished in another degree, as an high misprision.

¶ *Per gentes de leur condition.* That is, per pares, or their equals, whereof we have spoken before in the exposition of the 29 Chapter of Magna Charta, *Verb. per judicium parium suorum*, and more shall be said hereafter. This Branch (*per gentes de leur condition*) extendeth only to a conviction by *Verdict*, whereof the Statute particularly speaketh; but yet where the party indicted confesseth the offence or standeth mute, he shall have judgement as in case of High Treason. For this branch being affirmative, is taken cumulative and

13 Eliz. Dier 298.
13 Eliz. cap. 1.
Nota bene. Vide supra verbo Mort.
* Inter leges Alveredii, cap. 4.

* So resolved by the Justices Pasch. 35 Eliz. which we heard and observed.

a 26 H. 8. cap. 13.
1 E. 6. cap. 13.
1 & 2 Ph. & Mar. cap. 9, 10.

1 Eliz. cap. 6.
13 Eliz. cap. 1, &c.
14 Eliz. cap. 1.

b See the fourth part of the Institutes, cap. 26.

Brook treason 24. writing of Letters.

c 1 Mar. c. 1. c. 1. See the statute of 3 H. 7. hereafter, cap. 4. directly in the point by the judgement of the Parliament.

Nota, this Act of 25 E. 3. saith, *per overt fact, per apertum factum*, and not *per apertum dictum*, by word or confession.

See 25 H. 8. c. 12. Eliz. Barton, Edw. Locking, and others attainted by Parliament for divers words and conspiracies, which being not within this Act, without an overt act they could not be attainted by the Common Law.

* *Nota.*
d See in the chapter of Misprision.

e Mag. Char. c. 29.

and not privative. And therefore seeing upon confession, or standing mute, the judgement in case of High treason was given at the Common law, this Act being, as it hath been said, affirmative, taketh not away the same: And (to say once for all) the clause hereafter of restraint of like cases, &c. extends only to offences, and not to tryals, judgements, or executions.

¶ *Si home counterface le grand Seale* All our ancient Authors agree that this was High treason by the Common law, and for this offence his judgement was to be drawn, hanged and quartered, at the Common law, as in other cases of High treason, (the counterfeiting of the Kings money excepted.) See The second part of the Institutes. W. 1. cap. 5.

In ancient time every treason was comprehended under the name of felony, but not *contra*. And therefore a pardon of all felonies was sometime allowed in case of High treason. But the Law is, and of long time hath been otherwise holden: and if the indictment were felonice, and not proditorie, (for the King may lessen the offence, if it please him) then the pardon of felonies is good at this day, for no indictment can be of High treason without this word [*proditorie*:] and in qualibet prodicione implicatur felonis, quia in qualibet brevi de exigendo super quolibet indictamento de prodicione proclamator facit sic, I. B. An exigent on the head of treason and felony.

A compassing, intent, or going about to counterfeit the great Seal is no treason, but there must be an actual counterfeiting, also it must be to the likeness of the Kings great Seal; the words be, *Counterface le grand seal le Roy*.

Now it is to be seen what shall be said a forging, or counterfeiting of the great Seal. If the Lord Chancellor, or Lord Keeper put the great Seal to a Charter, &c. without warrant, this is no treason, because the great Seal is not counterfeited. But it seemeth by Britton, fol. 10. b. that it was treason at the Common law; and of that opinion is Fleta, fol. 29. a. but it is no treason now (without question) by the negative clause of this Act.

If a man take war lawfully imprinted with the great Seal from one patent, and fix it to a writing purporting a grant from the King, there have been divers opinions in this case what the offence is, which we will rehearse.

In 40 Ass. which was about 15 years after the making of this Act, it was not holden High treason, but a great misprision, for that it is no counterfeiting of a new, but an abuse of the true great Seal.

In 42 E. 3. the Abbot of Wyner caused Rob. Rigge his Commoigne to raise a Charter of R. 1. and put out the maner of Fiscrud, and in place thereof put in Enegehe. And this offence was heard, and sentenced before the King and his Counsell in the Star-chamber as a great offence and misprision: for if it had been High treason, it should have had another tryall, and yet this was a great abuse of the great Seal.

2 H. 4. The taking of the great Seal from one Patent, and fixing it to a Commission to gather money, &c. was adjudged to be such an offence, as the offender had judgement to be drawn and hanged. The record of which case we have perused, and the effect thereof is this. The party is indicted generally for counterfeiting of the great Seal, whereunto he pleaded not guilty: and the Jury found him not guilty of the counterfeiting of the great Seal, as was supposed by the indictment, and found further specially, that he took the great Seal from one patent, and put it to the commission, and that the party put the same in execution, and there judgement was given, that he should be drawn and hanged: which (whatsoever the offence was) ought not to have been given upon this verdict, the Jury finding him not guilty of the offence alledged in the indictment: And besides the judgement is such as is given in case of Petit treason, and not of High treason. Whereby it appeareth how dangerous it is for any to report a case by the ear, specially concerning treason, unless he had advisedly read the Record: for (as I take it) the misreport of this case hath hatched errors, and he mistook the judgement, if it had been High treason, for then it should have been drawn, hanged and quartered.

Bract. l. 3. fo. 118.
Brit. fo. 10. &c.
Bract. l. 5. fo. 414.
Fleta l. 1. ca. 21.
Mirror ca. 1. § 6.
de fauonerie.

29 Ass. pa. 49.
1 E. 3. tit. Chfe
F. 13. 22 Ass. Pl.
49.

2 R. 3. 9.

3 H. 7. 10. a.

40 Ass. p. 33.

Rot. Clam.
42 E. 3. my. & in
Coro.

2 H. 4. fo. 25.

Errores ad sua
principia referre,
est refellere,
To bring errors
to their begin-
ning, is to see
their last.

37 H. 8. Br.
Treason.
Stanf. Pl. Coron.
fo. 3. c.
Bracton agreeth
with it, *ubi supra*;
Leake's Case, Hil.
4. Ja. R.

37 H. 8. Br. tit. Treason. A Chaplain had fired such a great Seal to a patent of dispensation with non-residence; and this was holden a misprision, and not High treason, for it was an abuse of the great Seal, and no counterfeiting of it. Stanford saith that it was adjudged in his time according to the book of 2 H. 4. Et sic ex errore sequitur error.

G. Leak a clerk of the Chancery joyned two cleas parchment sit for letters patents so close together with many clew, as they were taken for one, the uppermost being very thin, and did put one labell through them both, then upon the uttermost he writ a true patent, and got the great Seal put to the labell, to the labell and the seale were annexed to both the parchments, the one written, and the other blank: he cut off the glewed skirts round about, and took off the uppermost thin parchment (which was written, and was a true and perfect patent) from the labell, which with the great Seal did still hang to the parchment: then he wrote another patent on the blank parchment, and did publish it as a good patent. Hereupon two questions were moved. 1. Whether this offence be High treason or no. 2. If it be High treason, then whether he may be indicted generally for the counterfeiting of the great Seal, or else the speciall fact must be expressed. And upon conference had between the Judges, upon great advisement and consideration it was in the end, concerning the first point, resolved by the Justices (saving a very few) upon the authorities aforesaid, and for that it was no counterfeiting of the great Seal within this statute, that this offence was neither High treason nor Petit treason, because it is not within either of the branches of this statute, but it is a very great misprision: and the party delinquent lieth at this day. As to the 2. point it was resolved, that if the speciall matter had amounted to counterfeiting of the great Seal in fact within this Act, then he might have been generally indicted of High treason for counterfeiting the great Seal. As if a man in an array kill a Constable that comes to keep the Kings peace without any offence malice prepensed, this is murder in law, and yet the delinquent may be generally indicted of murder by malice prepensed.

And Pleta, who wrote before this Act, telleth us, that *Quatenus falsi dicuntur, cum quis illicitus (cum non fuerit ad hoc data autoritas) de sigillo regis raptum vel inventum, & brevis chartaque consignaverit.* But whatsoever offence it was before the making of this statute, it is after this statute no High treason, because it is no counterfeiture of the great Seal, but a misusage thereof.

Qui convictus fuerit pro falsatione sigilli dom. regis, quod tradatur Episcopo Sarum, qui cum petiti in clericum suum sub poena & in forma qua decet, quia videtur concilio quod in tali casu non admittenda est purgatio, &c. Hereby it should appear that in those days a man might have had his Clergy for this offence; and therefore, as some hold, it was not then holden to be High treason: & herein also is the preamble of this Act, concerning divers opinions in case of treason, verified.

This statute naming the great Seal and privy Seal, the forging and the counterfeiting of the privy signet, or of the signe manuel, was not within this statute. But by the statute of 1 Mar. it is made High treason in both cases. Albeit that in this Act there is no mention made of aiders and consenters to this counterfeiting, yet they are within the purview of this statute, for there be no accessories in High treason.

[*Quia sa monye.*] This was treason by the Common law, as it appeareth by all the said ancient authors, *ubi supra* (verbo, Si homine counterface in grand seale) and therefore the opinion in 3 H. 7. is holden for no law, that it was but felony before this Act. The forging of the Kings coin is High treason, without utterance of it, for by this Act the counterfeiting is made High treason. See the second part of the Institutes, W. 1. cap. 15. & 2d Thom. V. Wallingham, Hypodigme Neultriz, An. Dom. 1078. Judai pro consura monetarum in magna multitudine ubique per Angliam suspenduntur, &c. Si ipse qui facit monetam auctoritate regis, &c. illam facit minus in pondere.

40 Aff. 33.
42 E. 3. Rot. Cl.
ubi supra.
37 H. 8. Br. dev.
4 Fleta l. 1. ca. 22.
Brinton fo. 10. b.
See before, fo. 15.
6 Rot. Parl. Hil.
18 E. 1. fo. 92. nu.
125.
c. 1 Mar. cap. 6.
1 & 2 Ph. & Mar.
ca. 11.
* 19 H. 6. 47.
3 H. 7. 10. Stanf.
Pl. Coron. 3. vide
postea ad 64.
principall & access.
See Mich.
13 & 14 Eliz.
Dier 296. Considers
Case.
d See Mat. Par.
Anno 34 H. 3.
pag. 753. de pecunia
approbata & reprobat.
Et Wallingham
28 E. 1. Anno
Dom. 1300. Stat.
31 E. 1. de Weights
& Measures.
Rast. 7.
e Vet. Magna
Chart. ca. 11m.
fo. 251. a.
22 Aff. p. 49.
3 H. 7. 10. E. 3.
42. b. Coto. 130.
f 6 H. 7. 13.
1 R. 3. 1.
g Wall. Hyp.
Neultriz p. 69.
1278. 6 E. 1.
b 3 H. 7. 10. a. b.

vel alliaia, viz. Alcumino vel alio falso metallo contra ordinationem, &c. This is there holden to be High Treason, and by that Book taken for a counterfeiter of the Kings money within the Purten of this statute. And herewith agreeth Britton, who saith, Des fauceres q. oune nostre monye counterfeir, ou plus de alaye mise en nostre monye q. nulter, ne seroit solong; le forme & usage de nostre Realme.

Ordeine fuit q. nul roy de cest realme ne puit changer sa monye, ne imoier, ne amender, ne auter monye faire q. de ore & argent, sans l'assent de tous les Counties. It was ordained, that no King of this Realme might not change his money, nor impair nor amend the same, nor other money make then of Gold or Silver, without assent of Parliament.

Clipping, washing, and filing of the money of this Realm, was no counterfeiting of it within this Act. And therefore being a like Case, it was declared by Parliament in Anno 3 H. 2. cap. 6. to be High Treason; but that Act being repealed by 1 Mariz, the statute of 5 Eliz. cap. 1. hath declared, that clipping, washing, rounding, or filing, for wicked lucre and gain, &c. to be High Treason. And by the statute of 18 Eliz. it is declared, That if any person for wicked lucre or gains sake, shall by any art, wayes, or meanes whatsoever, impair, diminish, falsifie, scale, or lighten the Kings money, &c. it is High Treason, for being a like case, it was to be declared by Parliament.

Forging or counterfeiting of soverain money, which is not currant within the Realm, is misprision of Treason, and the offender shall forfeit as for concealment of High Treason.

¶ **Sa monye.** This extendeth only to the Kings money coined within this Realm; and therefore after this statute, if a man had counterfeited the money of another Kingdome, though it were currant within this Realme, it was no treason, untill it was so declared by Parliament by 1 Mariz, and in An. 1 & 2 Ph. & M. and the said Acts of 5 Eliz. & 18 El. do extend to soverain coin currant within this Realme. And it is holden, that at the making of this statute of 25 E. 3. there was no money currant within this Realm; but the Kings own coin. See the statute called Statutum de moneta magna, & statutum de moneta parva. And it is to be known, that if any do counterfeit the Kings coin contrary to this statute of 25 E. 3. he shall have the punishment of his body but as in case of Petit Treason, that is, to be drawn and hanged till he be dead, but the forfeiture of his lands is as in other cases of High Treason; for this statute is but a declaration of the Common law, and the reason of his corporal punishment is, for that in this case he was only drawn and hanged at the Common law, but a woman in that case was to be burnt.

The Abbot of Dissenden in the County of Buckingham, for counterfeiting and refecting of the Kings money, was adjudged to be drawn and hanged, and not quartered. The want of observation of the said distinction hath made some to erre in their judgement. Note, This Act of 25 E. 3. maketh no exposition of the judgement, therefore such judgement as was at the Common law either in case of High Treason or Petit Treason must be given.

But if one be attainted for diminishing of the Kings money upon any of the Statutes made in Queen Maries time, or in the time of Queen Elizabeth, because it is High Treason newly made, the offender shall have judgement as in case of High Treason, which judgement you may see in the first part of the Institutes, Sec. 747.

And when a woman commits High Treason, and is quick with child, she cannot upon her arraignment plead it, but she must either plead not guilty, or confesse it: and if upon her plea she be found guilty, or confesse it, she cannot allege it in arrest of judgement, but judgement shall be given against her: and if it be found by an inquest of Patrons that she is quick with child, (as primam sententiam will not serve) it shall arrest and respice execution till she be delivered; but she shall have the benefit of that but once, though she be again quick with

4 See Inter leges Athelstani, cap. 14. Canuti, cap. 61. Britton cap. 5. fol. 10. b.

See the Mirror, cap. 1. §. 6. De la mony falsifie acc' with 3 H. 7. and cap. 5. §. 1. and Fleta cap. 22. acc' b Mir. cap. 1. §. 3. inter Artic. per viels royes ordeinus.

Rot. Par. 12 E. 3. nu. 15. Vide hic poitea, cap. 31. 45 E. 3. cap. 13. 9 H. 5. cap. 11. Stat. 1.

See the second part of the Institutes, cap. 10. Artic. super Cart. and the exposition upon the same.

63 H. 5. cap. 6. 1 E. 6. cap. 12.

5 Eliz. cap. 11. d Nota, for wicked lucre and gain.

e 18 Eliz. cap. 1. f 14 Eliz. cap. 3.

g See hereafter, cap. Principall and Accessory.

h 1 Mar. cap. 6. 1 & 2 Ph. & Mar. cap. 11.

i Ver. Mag. Charta, part. 2. fol. 38, 39, 40.

k Fleta lib. 1. c. 22. who wrote before this statute, which is but a law De-

claratory as it appeareth before.

23 Ass. p. 2. 290. (55)

Dier 6. Eliz. Term. Tr. M. S.

pro consura moneta trabe & pend.

Tr. 24 H. 8. in Justice Spilmans Reports, second.

1 Mich. 31 E. 3. coram rege.

Rot. 55. Buck within 6 years

after making of our statute.

m 25 Eliz. 41. b. Cor. 130. 23 Ass.

p. 2. 22 Ass. p. 71. 22 E. 3. Cor. 133.

12 Ass. p. 11. 8 E. 2. Cor. 4207.

Stanford f. ult. b.

with child: so as this respite of execution for this cause is not to be granted only in case of felony, whereof Justice Stanford speaketh, but in case of High Treason and Petit Treason also.

Vid. Hereafter,
cap. 30.
Rot. Pari. 17 E. 3.
nu. 15.

7 H. 7. 10.

Lib. 7. Calvins
case, ubi supra.

3 H. 7. 10.

2 Rot. Parliam.
20 E. 1. nu. 2.
John de Britains
case.

3 Reg. 21. 15.
See later leges
Aluredi, cap. 4.
ubi supra. Vita
et fortuna omni-
um privatur.
Cust. de Norm.
ca. 14. 22 lib. Ass.
pl. 49.

¶ Si home port faux money en cest roialme, counterfeit au money danglitterre, & sachant le money estre faux, &c.]

By this branch six things are to be observed. First, that the bringing in of counterfeit money, & not the counterfeiting, is expressed in this word [apport.] Secondly, that it must be brought from a foreign Nation, and not from Ireland, or other place belonging to, or being a member of the Crown of England: and so it hath been resolved, so wary are Judges to expound this statute concerning Treason, and that in most benigne sense. For albeit Ireland be a distinct Kingdome, and out of the Realme of England to some purposes, as to Provisions and Fines levied, &c. as hath been said: yet to some intent it is accounted as a member of, or belonging to the Crown of this Realm. And therefore a writ of Error is maintainable here in the Kings Bench of a judgement given in the Kings Bench in Ireland, so as the Judges did construe this statute not to extend to false money brought out of Ireland. Thirdly, it must be to the similitude of the money of England. Fourthly, that the bringing of it into this Realm must know it to be counterfeit. Fifthly, uttering of false money in England, though he know it to be false and counterfeit to the likeness of the coin of England, is no treason within this statute, unless he brought it from a foreign Nation, for the words be, si home apport faux money en cest roialme. But if money false or clipped be found in the hands of any that is suspicious, he may be imprisoned untill he hath found his warrant, per statum de moneta magni vet. Mag. Chart. fol. 38. 2 parte. Lastly, he must merchandise therewith, or make payment thereof, expressed in these words, Pur merchandizer, ou paiement fair in deceit nostre seignior le roy & son people. See more, De moneta regis, and of the derivation thereof, in The second part of the Institutes, in Artic. super cartas, cap. 20.

¶ Si home rust Chancelour, Tresurer, ou Justice nostre seignior le roy del un bank ou del aurer, Justice in Eire, ou Justices, & tous autres Justices, signes doies & terminer esteant en leur place faisant leur office.]

In this case, albeit one intend to kill any of these here named in their place and doing their office, and thereupon strike or wound any of them, this is no treason: For our statute saith, Si home rust Chancelour, &c. If a man kill the Chancelour, &c. For if it be treason, death must ensue. And the reason wherefore it is treason in these cases is, because sitting judicially in their places, (that is, in the Kings Courts) and doing their office in administration of justice, they represent the Kings person, who by his Oath is bound that the same be done. And this Act extends only to the persons here particularly named, and to no other: and therefore extendeth not to the Court of the Lord Steward, or of the Constable and Marshall, nor to the Court of the Admiralty, or any other, nor to any Ecclesiasticall Court; Nay, it extends not to the High Court of Parliament, if any Member of the Lords House or House of Commons be slain in his place, and doing his office, because it is casus omissus, and not mentioned in this Act. But in all those cases it is wilfull murder, for the Law implieth malice.

¶ Et soit assavoir q in les cases susnommes doit ee adjudge treason q se extend a nostre seignior le roy & sa royall Majestie: & de tiel treason le forseiture des cheats appartient a nostre seignior le roy cibien des trefes & tenements tenus des auters, come de luy mesme.

¶ Des trefes & tenements tenus des auters, come de luy mesme.] This is an affirmance of the Common Law; and the reason thereof is, for that the offence is committed against the Sovereign Lord the King, who is the light and the life of the Common-wealth: and therefore the Law doth

both give to the king in satisfaction of his offence, all the lands, &c. which the offender hath, and that no subject should be partaker of any part of the royal seizure for this offence.

And where the words be [Lands and Tenements holden, &c.] yet the forfei-
ture extends to * rents charges, rents seck, Commons, Copyholdes, and other
hereditaments which are not holden, for in case of High Treason the tenure is
not materiall. *Am 7. 21/2*

This clause hath 7 limitations. First, this Act extends not ^a to lands in taylor, (saving only for the life of tenant in taylor) but the forfeiture of escheats is to be understood of such Lands and Tenements as he might lawfully forfeit. And these generall words take not away the statute of donis conditional. * but latter statutes give the forfeiture of estates in tail. 2. For both this Act extend to uses: but * latter statutes do name uses. 3. ^a Not to rights of actions, where the entry is taken away; and so is the law clearly holden at this day. 4. For to any conditions: but by a * latter statute conditions, unlesse they be inseparably knit to the person, be given to the King. 5. For to rights of entry, where any was in the lands ^f by title before the treason committed: but such a right of entry is since given by latter statutes. 6. For to lands or tenements, or rights ^g in auer droit, as in the right of the Church, nor to lands in the right of a wife, but only during the coverture, and it extendeth to land which the offender hath ^b for life, for the forfeiture of the profits during his life. 7. It extendeth not to * a foundership of an house of Religion in Free almoign, for that is annexed to the blood of the Founder. Here goods and chattells be not named, but the forfeiture of them is implied in the judgement.

i Nota Hecoz, the said Acts of 26 H. 8. 33 H. 8. 5. and 6 E. 6. do yet remain in force, notwithstanding the said statute of 1 Mar. as it hath been often adjudged and resolved, and namely Mich. 21 Ja. in the Exchequer Chamber in a writ of Error, upon a judgement given in the Exchequer, between Ratcliffe and the Lord Sheffield, by all the Judges of England, and is agreeable to common experience.

See more of High Treason in the next Chapter following, cap. 2. verbo, Et
pur ceo que plusors autres cases, &c.

* 24 B. 3. 33. 72. Corody Br. 5. Temps H. 8. Elſcheat 239. i 12 El. Diſer 289. lib. 3. fol. 10. 34. lib. 8. 72. 166. lib. 9. fol. 140. Stanf. Pl. Coron. 187. 2.

CAP. II.

Of Petit Treason.

E T ovesque ceo il y ad un auter manner de treason, cest assavoir, ^{Britton cap. 8, & cap. 12.} quant un servant tua son maister, ou un feme tua son baron, ou quant home seculer ou de religion tua son prelate a que il doit foye & obedience. Et de tiel manner de treason la forfeiture des Escheats appartenont a chescun seignior de son fee proper, &c.

And moreover there is another manner of Treason, that is to say, when a Servant slayeth his Master, or a Wife her Husband, or when a man secular or religious slayeth his Prelate to whom he oweth faith

faith and obedience. And of such treason the Escheats ought to pertain to every Lord of his own fee, &c.

It was called High or Grand treason in respect of the royall Majesty against whom it is committed; and comparatively it is called Petit Treason (whereof now this statute speaketh) in respect it is committed against Subjects and inferiour persons, whereof this Act doth enumerate three kinds.

¶ Quant un servant tua son Maister.] This was Petit Treason by the Common Law, for so it appeareth by the 1. book of 1. Ass. that a woman servant killed her Mistres, wherefore she had judgement to be burnt, which is the judgement at this day of a woman for Petit treason. And herewith agreeth 21 E. 3. where the reader must know, that in stead of Mere in that case you must read Maister.

b And upon this Act, if the servant kill the wife of his Master, it is Petit treason, for he is servant both to the husband and wife.

c If the childe commit Parricide in killing of his Father or Mother (which the Law-makers never imagined any childe would do) this case is out of this statute, unlesse the childe served the Father or Mother for wages, or meat, or drink or apparell, for that it is none of these three kinds specified in this Law. And yet the offence is far more hainous and impious in a childe then in a servant, for Peccata contra naturam sunt gravissima: but the Judges are restrained by this Act, to interpret this Act, à simili, or à minore ad majus, as hereafter shall be said. And * some say that Parricide was Petit treason by the Common law.

d A servant of malice intended to kill his Master, and lay in wait to do it whilst he was his servant, but did it not till a year after he was out of service; and it was adjudged Petit treason within this Act.

¶ Un feme tua son baron.] This was Petit treason by the Common Law, as it appeareth in our books. If the wife procure one to murder her husband, and he doth it accordingly, in this case the wife being absent is but accessory, and shall be hanged and not burnt, because the accessory cannot be guilty of Petit treason, where the principall is not guilty but of murder, and the * accessory must follow the nature of the principall. But if he that did the murder had been a servant of the husband, it had been treason in them both, and the wife should have been burnt. And so it is in the case before of a servant, and in the case hereafter of a Clerk.

If the wife and a stranger kill the husband, it is Petit treason in the wife, and murder in the stranger: and so it is in the case of the servant next before, and of the Clerk next after.

Before this statute it was Petit treason, si quis falsaverit sigillum domini sui de cujus familia fuit. Britton agreeth herewith. But these are taken away by this Act, and all other saving these that are here expressed.

¶ Quant home seculer ou de religion tua son prelate a que il doit foy & obedience.] This clause is understood onely of an Ecclesiastical person, be he secular or regular, if he kill his Prelate or Superiour, to whom he oweth faith and obedience, it is Petit Treason, and so it was at the Common Law. And Petit Treason both presuppose a trust and obedience in the offender, either Civil, as in the wife and servant, or Ecclesiastical, as in the Ecclesiastical person.

Aiders, abettors, and procurers of any of these Petit Treasons, are within this Law.

If the servant kill his Mistres, viz. his Masters wife, this is treason (as hath been said) not by equity, for that is denied as well in Petit Treason as High Treason, but it is within the letter of this statute, for she is a Master.

In High Treason there are no accessories, but all be principalls, and therefore

412 Ass. p. 30.
21 E. 3. 17.
F. coron. 447.
Statham tit. cor.
21 E. 3. 22 Ass.

P. 49.
19 H. 6. 47. Pl.
Com. 86. b.
Dier 3. Mar. 128.
7 El. 235.

c Exodus, ca. 21.
v. 15, 17.

Lev. 20. v. 9.
1 Mar. per Brom-

ley & Portman
of the report of
Justice Dalison.
vid. 1 R. 3. 4.

In culco parricide
cum simia, cane,
gallo & serpente
inclusi mari olim
mergebantur: sed
nos non habemus
talem consuetudi-

nem.
* 22 E. 1 Marth.

Par. 874.
d 33 Ass. p. 7.

Li. i. f. 99. Shellys
case. 10 H. 6. 47.

Pl. com. 260.
c 15 E. 2. Coron.

383. 19 H. 6. 47.
See C. Pr. & Acc.

Dier 34 H. 8. 50.
Dier 16. El. 332.

Saunders case.
Pasch. 32 E. 3.

Rot. 62. coram
rege. Ph. Cliftons

case.
* 40 Ass. p. 15.

Fleta lib. 1. ca. 22.
Britton fo. 16.

19 H. 6. 47.

40 Ass. ubi supra.
& 16 El. ubi sup.

19 H. 6. 47. by all
the Judges.

foze whatsoeuer act oꝛ consent will make a man accessory to a felony befoze the act done, the same will make him a pꝛincipall in case of High Treason. But in case of Petit Treason there may be accessories, either befoze oꝛ after the act done, as in case of Murder oꝛ Homicide.

Here it appeareth that Acts of Parliament may binde men of the Church, Secular oꝛ Regular, and no benefit of Clergy allowed unto them in case of treason: but a heretofore you shall read at large in the exposition of the 15 chapter of Articuli cleri.

¶ Et de tiel maner de treason forfeiture des Escheats apperteinont a chescun seignior de son fee proper.] *See heretofore*

hereafter in the chapter of Forfeiture. *b* If a man seised in fee of a Fair, Market, Common, rent-charge, rent-seck, Warren, Corrovy, oꝛ any other inheritance that is not holden, and is attainted of felony, the King shall have the profits of them during his life: but after his decease, seeing the blood is corrupted, they cannot descend to the heir, * noꝛ can they escheat, because they be not holden, they perish and are extinct by Act in Law: For in Escheats for Petit Treason oꝛ Felony a tenure is requisite, as well in the case of the King as of the Subject. *See h. 19.*

An Approver in case of felony refusing the combat with the Appellee, shall have like judgement that is for Petit Treason; Probator recusans duellum ad iudicium suspendi & trahi, in odium falsæ accusationis: but yet it is not Petit Treason, because it is none of the three specified in this Act.

The case which Shard reciteth in 40 Ass. that a Poorman being leader of an English Ship, who had Englishmen with him, and robbed divers upon the Sea, and were taken and found guilty: and as to the Poorman it was but felony (because Poormanly was lost by King John, and was out of the ligeance of E. 3.) and as to the English it was adjudged treason, and the offenders drawn and hanged, which was the judgement of Petit Treason: but this must be intended to fall out befoze this statute of 25 E. 3. for it is none of the Petit Treasons mentioned in this Act.

¶ Et pur ceo que plusors auters cases de semblable treason purront escheer en temps a vener, queux home ne purra penser, ne declarer en present: Assent est, que si autre case suppose treason, que nest especie paramount, aveigne de novel devant aucun Justice, demourge le Justice sans alter a judgement de treason, tanque per devant nostre seignior le roy en son Parliement soit le case mere & declare, le que le ceo doit estre adjudge treason, ou autre felony.

Rerum progressus ostendunt multa qua initio prævideri non possunt.

And because that many other like cases of Treason may happen in time to come, which a man cannot think noꝛ declare at this present time: It is accorded, that if any other case supposed treason, which is not above specified, doth happen befoze any Justice, the Justice shall tarry without going to judgement of the treason, till the cause be shewed and declared befoze the King and his Parliement, whether it ought to be judged treason oꝛ other felony.

¶ Semblable treason.] In this case the Judges shall not judge a simili, oꝛ by equity, argument, oꝛ inference of any treason, High oꝛ Petit, for no like case shall be adjudged treason, &c. And note this branch extendeth (as hath been said) to the offence, viz. treason, and not to triall, judgement, oꝛ execution.

¶ Si autre case suppose treason.] No other case, though of as high oꝛ higher nature, &c. shall be adjudged treason, High oꝛ Petit, as befoze it appeareth in the case of Parricide, Anno 1 Maria, ubi supra.

¶ Treason.] Either High Treason oꝛ Petit Treason, so as this branch extendeth as hath been said to the offence of Treason only.

See the expositi-
on upon the sta-
ture *De frang.*
prisonam.

1 H. 6. 5.

9 E. 4. 26, &c.

See 1 Mar. of Ju-
stice Dalisons
Report, ubi
supra.

1 Mar. cap. 1.

Rot. Parl. 5 H. 4.
nu. 11, 12. See
nu. 15. Ibid.

27 Ass. p. 63.

Rot. Parl. 17 R. 2.
nu. 20.

13 El. cap. 1, 2.

14 El. ca. 1, 2, &c.

Anno 21 R. 2. in
Latin.

1 R. 2. ca. 1, & 4.

¶ *Que nest specific paramount.*] This word [specific] is to be specially observed, for it is as much to say as particularized, or set down particularly: so as nothing is left to the construction of the Judge, if it be not specified and particularized before by this Act. A happy sanctuary or place of refuge for Judges to fly unto, that no mans blood and ruine of his family do lie upon their consciences against law. And if that the construction by arguments à simili or à minori ad majus had been left to Judges, the mischief before this statute would have remained, viz. diversity of opinions what ought to be adjudged treason, which this statute hath taken away by expresse words: and the statute of 1 Mar. both repeal all treasons, &c. but only such as be declared and expressed in this Act of 25 E. 3. wherein this word [expressed] is to be observed.

In the Parliament holden Anno 5 H. 4. the Earl of Northumberland came before the King and Lords in Parliament, and by his Petition to the King acknowledged to have done against his allegiance; and namely, for gathering of Power and giving of Liveries, whereof he prayeth pardon: and the rather, that upon the Kings Letters he yielded himself, and came to the King unto York, where he might have kept himself away. The which Petition the King delivered to the Justices, by them to be considered. Whereupon the Lords made protestation, that the order thereof belonged to them as Peers of the Parliament, to whom such judgement belonged in weighing of this statute of 25 E. 3, &c. and they judged the same to be no treason, nor felony, but onely trespassse finable at the Kings will. And the opinion in 27 Ass. is denied, that if one of the Indisers discover the counsell of the King, that it should be treason; because it is not specified before in this Act, and therefore neither High Treason, nor Petit Treason.

¶ *Tanque per devant le Roy & son Parliament.*]

By this it is apparent, that any like or other case ought to be declared by the whole Parliament, (and not by the King and Lords of the Upper house onely, or by the King and the Commons, or by the Lords and Commons.) And so was it done by the whole Court of Parliament in 3 R. 2. ubi supra, 5 Eliz. 18 Eliz. ubi supra, and many other Acts of Parliament.

John Duke of Gloucestre and of Lancaster, Steward of England, and Thomas Duke of Glocester, Constable of England, the Kings Uncles, complained to the King, that Thomas Talbot Knight, with other his adherents, conspired the death of the said Dukes in divers parts of Cheshire, as the same was confessed and well known, and prayed that the Parliament might judge of the fault; (which Petition was just, and according to this branch of the statute of 25 E. 3.) But the Record saith further; whereupon the King and Lords in the Parliament adjudged the same fact to be open and High Treason: which judgement wanting the assent of the Commons, was no declaration within this Act of 25 E. 3. because it was not by the King and his Parliament according to this Act, but by the King and Lords only.

¶ *Soit le case monstre & declare, &c.*] This Declaration may be absolute, or sub modo, for a time.

By this which hath been said it manifestly appeareth, what damnable and damned opinions those were concerning High Treason, of Tresilian Chief Justice of the Kings Bench, Sir Robert Belknap Chief Justice of the Common Bench, Sir John Holk, Sir Roger Fulthorp, and Sir William Burghes, Knights, fellows of the said Sir Robert Belknap, and of John Lockton one of the Kings Serjeants, that were given to King R. the 2. at Nottingham, in the Eleventh year of his reign. But more detestable were the opinions of the Justices in 21 R. 2. and of Hanckford and Brinchley the Kings Serjeants, (and the rather, because they took no example by the punishment of the former) which affirmed the said opinions to be good and lawfull, saving Sir William Thirning Chief

Chief Justice of the Common Bench gave this answer, That declaration of Treason not declared belongeth to the Parliament; but to please, he said, that if he had been a Lord or a Peer of Parliament, if it had been demanded of him, he would have made the like answers. These Justices and Serjeants being called in question in the Parliament holden Anno 1 H. 4. for their said opinions, answered (as divers Lords Spirituall and Temporal did) that they durst not otherwise do for fear of death. It was thereupon enacted, that the Lords Spirituall and Temporal, or Justices, be not from thenceforth received to say, that they durst not for fear of death to say the truth. Which opinions being so manifestly against our said Act of 25 E. 3. afterwards in the Parliament holden 1 H. 4. it is affirmed by authority of Parliament, that in the said Parliament of 21 R. 2. divers Statutes, Judgements, Ordinances and Establishments were made, obtained and given erroneously and dolefully in great dishonour and small destruction and undoing of many honourable Lords and other liege people of this Realm and of their heires for ever. And therefore not only that Parliament of 21 R. 2. and the circumstances and dependances thereupon are wholly reversed, revoked, voided, undone, repealed and annulled for ever, but also the Parliament holden in 1 R. 2. by authority of which Parliament, Trehan, Belknap, and the rest of those false Justices and Serjeants aforesaid were attainted, is confirmed, for that it was (as there the Parliament affirmeth) for the great honour and common profit of the Realm.

Rot. Parl. 1 H. 4. nu. 97.

Melius est omnia mala pari quam malo consentire.

1 H. 4. ca. 3.

See the consequence of erroneous opinions in case of High Treason.

1 H. 4. ca. 4.

¶ Et si per case ascun home de cest roialme chivache armee, &c.] And if percase any man of this Realm ride armed, &c. For exposition hereof, see the Chapter hereafter against riding or going armed.

For the better instruction of the Reader to discern what offences be High Treason or Petit Treason at this day, it shall be necessary to adde hereunto the statute of 1 Mar. whereby it is enacted, [That no Act, Deed or Offence, being by Act of Parliament or Statute made Treason, Petit Treason, or misprision of Treason, by words, writing, ciphering, deeds, or otherwise whatsoever, shall be taken, had, deemed, or adjudged to be High Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misprision of Treason, in or by the Act of Parliament or Statute made in the 25 year of the reign of the most noble King of famous memory, King Edward the third, touching or concerning Treason, or the declaration of Treason, and none other, &c. any Act or Acts of Parliament, Statute or Statutes, had or made at any time heretofore or after the said 25 year of King E. 3. or any other declaration or matter to the contrary in any wise notwithstanding.]

1 Mar. ca. 1. Sessione prima.

The like statute was made Anno 1 E. 6. ca. 12.

See the statute of 1 H. 4. ca. 10. to the like effect.

Inter leges Canonicas cap. 7. *Inprimis iusta leges ut essentur, iniuste deprimentur.*

Aliter in Antiquo MS.

Inprimis ut iusta leges erigantur; iniusta subvertantur.

Before this Act so many Treasons had been made and declared by Act of Parliament since this Act of 25 E. 3. some in particular, and some in general, and in such sort penned, as not only the ignorant and unlearned people, but also learned & expert men were many times trapped & snared: and sometimes treasons made or declared in one Kings time, were abrogated in another Kings time, either by speciall or generall words: so as the mischief before 25 E. 3. of the uncertainty what was treason & what not, became to be so frequent & dangerous, as the safest and surest remedy was, by this excellent Act of 1 Mar. to abrogate & repeal all, but only such as are specified & expressed in this statute of 25 E. 3. By which law the safety both of the King and of the subject, & the preservation of the Common-weale is wisely and sufficiently provided for, in such certainty, as nihil relatum est arbitrio Judicis. And certainly the two Rules recited in the Preamble of the said Act of 1 Mar. are assuredly true. The first, [That the state of a King standeth and consisteth more assured by the love and favour of the subject toward their Sovereigne, then in the dread and fear of Lawes made with rigorous paines and extreme punishment for not obeying their Sovereigne.] And the other, [That Lawes justly made for the preservation of the Common-weale without extreme punishment or penalty, are more often, and for the most part better obeyed and kept, then lawes and statutes made

high great and extream punishment:] *Micida imperanci melius paretur.*

In which Act five notable things are to be observed. First, it extendeth (without exception) to all High Treasons made by any Act of Parliament since the said Act of 25 E. 3. Secondly, to all declarations of High Treasons by any Act of Parliament since the said Act of 25 E. 3. (as of the said Declaration in 3 R. 2. of killing an Ambassadour and the like.) Thirdly, to all Petit treasons made or declared by any Act of Parliament since the said Act of 25 E. 3. Fourthly, albeit misprision of Treason is not mentioned in the Act of 25 E. 3. yet every misprision of any Treason made or declared since that Act by any Act of Parliament is abrogated. Fifthly, no offence to be Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed to be Treason, Petit Treason, or misprision of Treason by the said Act of 25 E. 3. There three things are to be observed. First, that this word [expressed] excludeth all implications or inferences whatsoever. Secondly, here misprision of Treason is taken for concealment of High Treason or Petit Treason, and only of High Treason or Petit Treason specified & expressed in the Act of 25 E. 3. Thirdly, that no former judgement, attainder, president, resolution, or opinion of Judges or Justices of High Treason, Petit Treason, or misprision of Treason, other then such as are specified and expressed in the said Act of 25 E. 3. are to be followed or drawn to example: for the words be direct and plain, That from henceforth no Act, Deed or Offence, &c. shall be taken, had, deemed or adjudged to be Treason, Petit Treason, or misprision of Treason, but only such as be declared and expressed in the said Act of 25 E. 3. & c. any Act of Parliament or statute after 25 E. 3. or any other declaration or matter to the contrary notwithstanding.] So as there is no High Treason, Petit Treason, or misprision of any Treason made or declared by any Act of Parliament or otherwise since the Act of 25 E. 3. but only such as have been made since the said Act of 1 Maria, and of those, only such as were made perpetual, & not during the life of Queen Mary or of Queen Elizabeth, whereof there be divers which now are expired, which you may read, being all in print. But there wanted nothing to the perfection of the Statute of 25 E. 3. but a limitation of some certain time wherein the offender should be accused. *c Post intervallum temporis accusator non erit audiendus, nisi docere potest se fuisse iustis rationibus impeditum.*

¶ Or the declaration of Treason, &c. *d* Declarations made during the natural life of Queen Elizabeth ceased by her death: for Declarations may have limitations as well as Statutes introducing of new laws.

There is another excellent branch of a Statute made in 1 & 2 Ph. & Mar. in these words. [And be it further enacted by the authority aforesaid, that all tryalls hereafter to be had, awarded or made for any treason, shall be had and used only according to the due order and course of the Common Law.]

¶ All tryals.] *e* Upon these words many things have been observed by others. First, that the Letter of this Act extendeth only to tryal of High treasons, or Petit treasons, and not to misprision. Secondly, wherein Treasons are to be tried by the Statute of 35 H. 8. cap. 2. and so it was resolved by all the Justices of England in Orurks Case, and had been so resolved before. But tryalls of Treasons to be had in Wales, or where the Kings writ runneth not, in such Shires as the King shall assigne by his Commission by the Statute of 32 H. 8. ca. 4. are abrogated by this Act, because they are tryable by the law.

h It hath been holden, that upon the tryall of misprision of treason there must be two lawfull witnesses, as well upon the tryall as upon the Indictment, as it was resolved by the Justices in the Lord Lumleyes Case, Hil. 14. Eliz. reported by the Lord Dier under his own hand, which we have seen, but left out of the print, which for other purposes is cited hereafter. Thirdly, it hath been holden, that this Act extendeth not to the Indictment of any treason, but to the tryall by Peers, if the offender be noble; or by Freeholders, if the offender be under the degree of nobility: and therefore upon the indictment which is in manner

a That is, of such treason, high or petit, as is expressed in the Act of 25 E. 3. and of no other treason. *b* 1 Mar. ca. 6. 1 & 2 Ph. & Mar. cap. 11. *c* 5 Eliz. ca. 1. & 11. 18 Eliz. cap. 1. 13 Eliz. cap. 2. 23 Eliz. cap. 1. 27 Eliz. cap. 2. 3 Jac. cap. 4. *d* Bracton lib. 3. fol. 128. b. *e* 13 Eliz. cap. 1. 14 Eliz. cap. 1. & cap. 2. *f* 1 & 2 Ph. & M. cap. 10. *g* See the second part of the Institutes. Mag. Chart. cap. 29. Veibo (per judicium patrum.) *h* 35 H. 8. ca. 2. 3 Mar. Dier 132. lib. 7. fo. 23. in Calvins case. Pasch. 33 Eliz. Orurks case. *i* 32 H. 8. cap. 4. *j* 1 E. 6. ca. 12. 5 E. 6. ca. 11. Both which are mentioned in the next Section. Hil. 14. Eliz. Dier M. S. *Nora*, This is the last resolution of the Judges in this point. At this time Catlin and Dier were Chief Justices, and Sanders Chief Baron, &c.

manner of an accusation, by the statutes of 1 E. 6. and 5 E. 6. two lawfull witnesses are requisite. The words of the statute of 1 E. 6. in the last branch be, [That none shall be indicted, arraigned, condemned, or convicted for any Treason, Petit Treason, misprision of treason, or for any words before specified to be spoken, after the said first day of February, for which the same offender or speaker shall in any wise suffer pains of death, imprisonment, losse or forfeiture of his goods, chatels, lands or tenements, unlesse he be accused by two sufficient and lawfull witnesses, or shall willingly without violence confesse the same.]

Nota, that [before specified] doe refer to the words mentioned before in the Act. 1. It is manifest by the connerion of the words, viz. [for any words before specified to be spoken, &c.] 2. The Treasons in 25 E. 3. were mentioned before. 3. The first words be [for any Treason, Petit Treason, misprision of Treason, &c.]

And by 5 E. 6. c. 11. it is provided by the last clause save one, [That none shall be indicted, arraigned, condemned, convicted, or attainted for any of the Treasons or offences aforesaid, or for any other treasons that now be or hereafter shall be, which shall hereafter be perpetrated, committed or done, unlesse the same offender be thereof accused by two lawfull accusers, &c. unlesse the said party arraigned shall willingly, without violence confesse the same.] Here two things are to be observed. 1. The particular penning of both these Acts, viz. indicted, arraigned, convicted, &c. and the words of 1 & 2 of Ph. & Mar. extend to tryalls onely, and not to the indictment. 2. Two lawfull accusers in the Act of 5 E. 6. are taken for two lawfull witnesses; for by two lawfull accusers, and accused by two lawfull witnesses (as it is said 1 E. 6.) is all one: which word [accusers] was used, because two witnesses ought directly to accuse, that is, charge the prisoner, for other accusers have we none in the Common Law; and therefore lawfull accusers must be such accusers as Law allows. And so was it resolved in the Lo. Lumleys case by the Justices. For if accusers should not be so taken, then there must be two accusers by 5 E. 6. and two witnesses by 1 E. 6. And the strange conceit in 2 Mar. that one may be an accuser by hearsay, was utterly denied by the Justices in the Lo. Lumleys case. And this word [awarded] in the statute of 1 & 2 Ph. & Mar. extendeth to the tryall upon the arraignment, and not to the indictment, for that is not said to be awarded.

And it was resolved by all the Justices in Rolstons case upon the rebellion in the North, that these words [shall willingly without violence confesse the same] are to be understood where the party accused upon his examination befoze his arraignment, willingly confessed the same without violence, that is, willingly without any torture: & is not meant of a confession before the Judge, for he is never present at any torture, neither upon his arraignment was ever any torture offered. And here cometh another statute made in 1 & 2 Mar. to be considered, by which it is provided, that treason for the counterfeiting and impairing of the coin currant in this Realm, &c. the offender therein, &c. shall be indicted, arraigned, tryed, convicted or attainted by such like evidence; and in such manner and form, as hath been used and accustomed within this Realm at any time before the first year of King E. 6. &c. Wherein the speciall penning of this Act is to be observed, which in case of treason concerning the counterfeiting or impairing of coin, &c. hath by particular words ressozed the evidence requisite by the Common Law, before the statute of 1 E. 6. as well upon the indictment as the tryall. But the Act of 1 & 2 Ph. & Mar. cap. 10. extendeth to tryalls onely in other cases of High Treason, and therefore that Act extendeth not to the indictment of other High Treasons. Also it is most necessary (as many do hold) that there should be two lawfull accusers, that is, two lawfull witnesses at the time of the indictment; for that it is commonly found in the absence of the party accused, and it may be when the party suspected is beyond Sea, or in remote parts, and may be outlawed thereupon; and therefore seeing the indictment is the foundation of all, it is most necessary to have substantiall proof in a cause so criminall, where probationes oportet esse luce clariores.

Latly;

1 E. 6. cap. 12.
5 E. 6. ca. 11.
See 13 El. ca. 1.
See before Verb.
[De coo provable-
ment fois arainr.]

See 1 El. ca. 6.
Stanf. Pl. Coron.
89. & 164.
4 Mar. Coron.
Br. 220. Dier.
2 Mar. 99. &
3 Mar. 132.

* Nota the general-
ity of these
words.

Regula. Verba generalia generaliter sunt intelligenda.

See hereafter,
c. 49. of Piracy,
&c.

Hil. 14. El. Lo.
Lumleys case,
ubi supra.
2 Mar. Dier 99.
100. Thomas
Case.

4 Mich. 13. &
14 El. Rolstons
case.

b 1 & 2 Ph. &
Mar. c. 11. supra.

1 & 2 Ph. & Mar.
cap. 10.

See Magna Chart. c. 29. and the exposition thereupon.

a Par. 25 E. 3. part. 1. nu. 16.

Ror. Parl. 21 R. 2. nu. 19. 21. the D.

of Norff. case. Rot. Par. 3 H. 4.

Ballehuls case. Ror. Vascor.

9 H. 4. nu. 14. John Bolemeys

case. Rot. Parl. 2 H. 6. nu. 9. the

Earl of Ormonds case.

Ror. Par. 8 H. 6. part. 2. m. 7. be-

tween Upton and Dowy. Vide the 4.

part of the Institu-

tures, ca. the Court of Chivalry, &c.

See Bract. lib. 3. fo. 119. a.

b 13 R. 2. ca. 2.

c Mirror ca. 3. §. ordonnance de at-

taint. Bract. l. 5. f. 354. 48 E. 3. 30.

35 H. 6. 46. Fort. ca. 32. 15 E. 4. f. 1.

Pl. Com. fo. 8. d Deu. 17. 6. 19. 15.

Mar. 18. 16. John 18. 23. 2 Cor.

13. 1. Heb. 10. 28. e And so I hold

the statute of 1 E. 6. c. 12. to be

a generall Law, and to extend to

all High Treasons, &c.

f Nota, as well upon the indi-

cement as the arraignment of

Treason there ought to be two

accusers. See Dier 2 & 3 Ph. & Mar.

132. g 1 E. 6. c. 12. the

last clause. 5 El. ca. 1. 1 & 2.

Ph. & Mar. ca. 11. Bract. lib. 3. f. 118.

Qui accusat in-
gra fama sit, &
non criminofus.

i Stat. de Kenelw. secunda parte

Vet. Mag. Chart. cap. 16.

k See the first part of the Institutes,

Sec. 194. See Fortescue ca. 26, 27. Juries ought to be informed by evidences and witnesses.

Lastly, if the indictment were part of the tryall, then ought he that is noble, and a Lord of Parliament, be indicted of High Treason, &c. by his Peers; for the tryall of him (without question) must be by his Peers: but the indictment of Peers of the Realm is alwaies by Free-holders, and not by their Peers, as hereafter shall appear. We have been the longer herein, in respect of some variety of opinion (for want of due and intire consideration had of all and every part of that which hath been said) upon serious study touching this point, without respect of a common wandring opinion.

And it seemeth that by the ancient Common Law, one accuser or witnesse was not sufficient to convict any person of High Treason: a For in that case, where is but one accuser, it shall be tried before the Constable and Marshall by Combat, as by many records appeareth. b But the Constable and Marshall have no jurisdiction to hold plea of any thing which may be determined or discussed by the Common Law. And that two witnesses be required, appeareth by our books, and I remember no authority in our books to the contrary: and the Common Law herein is grounded upon the Law of God, expressed both in the Old and New Testament; d In ore duorum aut trium testium peribit qui interficietur; Nemo occidatur uno contra se dicente testimonium.

And this seemeth to be the more clear in the tryall by the Peers or Nobles of the Realm, because they come not de aliquo vicinero, whereby they might take notice of the fact in respect of vicinities, as other Jurors may doe.

Having now rehearsed what others have said and holden, we upon due consideration had of the whole matter will set down our own opinion and reasons, in these four points following. First, that the statute of 5 E. 6. cap. 11. is a generall Law, and extends to all High Treasons, as well by the Common Law declared by the statute of 25 E. 3. as to any other statute made or to be made; the negative words of which statute be, [No person shall be indicted, arraigned, convicted, condemned or attainted for any Treason that now is, or hereafter shall be, &c.] Which words without all question are generall, and so to be taken. The words of that statute be further, [Unlesse the same offender be accused by two lawfull accusers.] These two lawfull accusers are in judgement of Law taken for two lawfull witnesses, and that for two causes. First, they must be lawfull, that is, allowed by the Lawes of the Realm: and by the Law, upon the arraignment of the Prisoner upon the indictment of Treason, no other accuser can be heard but witnesses only. Secondly, the words of the statute are [Which said accusers at the time of the arraignment of the party accused, if they be then living, shall be brought in person before the party so accused, and abow, and maintain that which they have to say to prove him guilty of the treason, unlesse the party arraigned shall willingly without violence confesse the same,] as by that Act it appeareth. Now to abow and maintain that which they have to say to prove him guilty of the Treason, is the proper office and duty of witnesses, and so it is said in the statute of 5 E. 6. c. 12. in the last clause (by two lawfull witnesses.) See the statute of 5 E. 6. c. 1. where it is said [accused by good and sufficient testimony:] and to the same intent, the statute of 1 & 2 Ph. & Mar. ca. 11. for the word [accused.]

i Puniantur accusatores penes dominum regem, quod amodo Rex eis de facili non credat: & talis poena fiat eis, qualis debeat fieri illis qui injuste fideles dñi regis exheredari & destrui fecerunt, &c.

a What this Act of 5 E. 6. extends as well to Petit Treason as High Treason, for the words be [any treason:] and so doth the statute of 1 E. 6. ca. 12.

3. What the statute of 1 & 2 Ph. & Mar. cap. 10. doth not abrogate the said Act of 1 E. 6. or of 5 E. 6. for that Act of 1 & 2 Ph. & Mar. extends only to trialls by the verdict of twelve men de vicinero, of the place where the offence is alleged, and the indictment is no part of the triall, but an information or declaration for the King; and the evidence of witnesses to the Jury is no part of the tryall, for by law the tryall in that case is not by witnesses, but by the ver-

dict of twelve men, and so a manifest diversity between the evidence to a Jury, and a tryall by Jury. And the word [awarded] in that statute doth prove that that Act extended onely to the Venire facias for tryall, for neither the indictment nor the evidence can be said to be awarded. Veritas quæ minime defensatur, opprimitur, & qui non improbat, approbat. Et sic libere animam meam liberavi.

a The tryall against an Alienné, that lived here under the protection of the King, and amity being between both Kings, for High treason, shall by force of this Act of 1 & 2 Ph. & Mar. be tryed according to the due course of the Common Law, and therefore in that case he shall not be tryed per medietatem linguæ, as he shall be in case of Petit treason, murder, and felony, if he prayeth it.

4. b That a tryall in a foreign County upon examination before three of the Council, &c. by the statute of 33 H. 8. c. 23. is abrogated by this Act of 1 & 2 Ph. & Mar. being a tryall contrary to the due course of the Common Law, which is to have it tryed by Jurors of the proper County: c but the indictment being found in the proper County, it may be by speciall commission heard and determined before Commissioners in any foreign County, but the tryall must be by Jurors of the proper County, and this is warranted by the course of the Common Law. And albeit when the Term begins, all Commissioners of Oier and Terminer in the County where the Kings Bench sit, be suspended during the Term, yet if an Indictment be found before such Commissioners before the Term, there may be a speciall Commission made to Commissioners in the same County, sitting the Kings Bench in that County, to hear and determine the same during the Term: for the Kings Bench hath no power to proceed thereupon, till the indictment be before them. And it is the better, if the speciall Commission bear Teste after the beginning of the Term. Note a diversity between generall Commissions of Oier and Terminer, and such a speciall Commission; and the Court of Kings Bench may be adjourned, and in the mean time the Commissioners may sit there.

d And where it is provided by the statute of 33 H. 8. cap. 23. that peremptory challenge should not from thenceforth be admitted or allowed in cases of High Treason or misprision of treason: e This branch is abrogated by the said Act of 1 Mar. For the end of challenge is to have an indifferent tryall, and which is required by Law; and to bar the party indicted of his lawfull challenge, is to bar him of a principall matter concerning his tryall: and all Acts of Parliament concerning incidents to tryalls contrary to the course of the Common Law, are abrogated by the said words, [and that all tryalls hereafter, &c.] But all this is to be understood of persons under the degree of Nobility; for in case of a tryall of a Noble man, Lord of Parliament, he cannot challenge at all any of his Peers.

f Henry Garnet Superiour of the Jesuites in England, upon his arraignment for the Powder Treason, did challenge Burrell a Citizen of London peremptorily, and it was allowed unto him by the resolution of all the Judges: g So as in case of High Treason, or misprision of High Treason, a man may challenge 35. peremptorily, which is under three Juries, but more he cannot.

Lastly, all statutes made before the said Act of 1 & 2 Ph. & Mar. for tryall of High Treason, Petit Treason, or misprision of Treason, contrary to the due course of the Common Law, are abrogated by the said Act of 1 & 2 Ph. & Mar. and tryalls by the due course of the Common Law with challenges incident in those cases are restored.

h If a man be indicted of High Treason, he may at this day plead a foreign plea, as he might do by the Common Law, and shall be tryed in the foreign county: but otherwise it is in cases of Petit Treason, murder, or felony, for there it shall be tryed in the county where the indictment is taken.

And forasmuch as the proceeding against a Noble Peer of the Realm, being a Lord of Parliament, in some points agrees, and in other points differeth from the proceeding against a Subject under the degree of Nobility: It shall be necessary to shew wherein they agree, and wherein they differ.

1. The

4 27 E. 3. ca. 8.
28 E. 3. ca. 18.
8 H. 6. ca. 29.
1 Mar. fo. 144.
Shirleyes case, and
so it was resolved
by all the Judges,
Hil. 36 El. in the
case of Doctor
Lopez, Emanuel
Loysie, and
Stephen Ferreira
de Gama.
b 33 H. 8. c. 23.
3 Mar. Dier 132
Dier 12 El. 286. b
li. 11. fo. 63. a. in
Doctor Fosters
case.
c 27 Ass. p. 1.
21 Ass. p. 12.
W. 1. c. 3, & c.
Mic. 25 & 26 El.
per les Justices in
Somerviles and
Ardens case.
Dier 12 El. 286. b.
All this was re-
solved Mic. 1. Ja.
in Sir Walter
Raleighs case.
Pl. Com. 388.
Count de Leice-
sters case.
d 33 H. 8. c. 23.
e And so it was
resolved, An. 1. Ja.
in Sir Walter
Raleighs case,
by all the Judges,
and had been re-
solved so before,
Stan. pl. cor. 157.
f Ja. R. in Gar-
nets case.
And so was it re-
solved M. 25 &
26 El. in Somer-
viles and Ardens
case.
g Br. tit. Chal-
lenge 217.
h 22 H. 8. c. 14.
32 H. 8. c. 3. See
4 H. 1. c. 2. and
22 H. 8. c. 2. plea-
ding, & c. for being
taken out of San-
ctuary in a foreign
county in case of
murder or felony.
See hereafter, ca.
Sanctuary, all
Sanctuaries ta-
ken away: and note
that the stat. of
22 H. 8. & c. ex-
tend only to In-
dictments, and not
to Appeals.

1 H. 4. 1.

1. The Noble Peer of the Realm must be indicted before Commissioners of Oier and Terminer, or in the Kings Bench, if the treason, misprision of treason, felony, or misprision thereof be committed in that County where the Kings Bench sits, as it was resolved in the case of Tho. D. of N. in An. 13 Eliz. And this is common to both degrees to be indicted by Jurors of that County where the offence was committed.

1 H. 4. 1.
10 E. 4. 6. b.
13 H. 8. 12.

2. When he is indicted, then the King by his Commission under the Great Seal constitutes some Peer of the Realm to be hac Vice Steward of England: For his stile in the Commission is, [Seneschallus Angliæ] who is Judge in this case of the treason or felony, or of the misprision of the same committed by any Peer of the Realm. This Commission reciteth the Indictment generally as it is found: and power given to the Lord Steward to receive the Indictment, &c. and to proceed Secundum legem & consuetudinem Angliæ. And a commandement is given thereby to the Peers of the Realm, to be attendant and obedient to him: and a commandement to the Lieutenant of the Tower to bring the prisoner before him.

3. A Certiorari is awarded out of the Chancery to remove the indictment if sent before the Steward of England indilare, which may either beare date the same day of the Stewards Commission, or any day after.

4. The Steward directs his precept under his seal to the Commissioners, &c. to certify the indictment such a day and place.

5. Another Writ goeth out of the Chancery directed to the Lieutenant of the Tower, to bring the body of the prisoner before the Steward at such a day and place as he shall appoint.

6. The Lord Steward maketh a precept under his seal to the Lieutenant of the Tower, &c. and therein expresseth a day and place when he shall bring the prisoner before him.

7. The Steward maketh another precept under his seal to a Serjeant at Armes, to summon Tor & tales dominos, magnates & proceres hujus regni Angliæ, prædicti R. Comitibus E. pares, per quos rei veritas melius sciri poterit, quod ipsi personakiter compareant coram prædicto Seneschallo apud Westm. tali die & hora, ad faciend. ea quæ ex parte domini Regis forent faciendæ, &c. Wherein four things are to be observed. First, that all these precepts must commonly bear date all in one day. Secondly, that no number of Peers are named in the precept, and yet there must be Twelve or above. Thirdly, that the precept is awarded for the return of the Peers before any arraignment or plea pleaded by the prisoner. Fourthly, that in this case the Lords are not de vicineto, & therefore the sitting and triall may be in any County of England. And herein are great differences between the case of a Peer of the Realm, and of one under the degree of Nobility.

1 H. 4. 1.

8. At the day, the Steward with six Serjeants at Armes before him takes his place under a Cloth of Estate, and then the Clark of the Crown delivereth unto him his Commission, who redelivereth the same unto him. And the Clark of the Crown causeth a Serjeant at Arms to make three Oyes, and commandement is given in the name of the High Steward of England to keep silence: and then is the Commission read. And then the Wsher delivereth to the Steward a white rod, who redelivereth the same to him again, who holdeth it before the Steward. Then another Oyes is made, & commandement given in the name of the High Steward of England to all Justices and Commissioners to certify all Indictments and Records, &c. Which being delivered into Court, the Clark of the Crown readeth the return. Another Oyes is made, that the Lieutenant of the Tower, &c. return his Writ and Precept, and do bring the prisoner to the Bar: which being done, the Clark reads the return. Another Oyes is made, that the Serjeant at Arms return his precept with the names of the Barons & Peers by him summoned, and the return of that is also read. Another Oyes is made, that all Clerks, Barons and Peers (which by the commandement of the High Steward be summoned) answer to their names, and then they take their places

places and sit down, and their names are recorded: and the entry of the Record is, that they appear, *Ad faciendum ea quæ ex parte Domini Regis eis injunguntur*. And when they be all in their places, and the prisoner at the Bar, the High Steward declares to the prisoner the cause of their assembly, and perswades him to answer without fear, that he shall be heard with patience, and that justice should be done. Then the Clerk of the Crown reads the Indictment, and proceeds to the arraignment of the prisoner; and if he plead not guilty, the entry is, *Et de hoc de bono & malo ponit se super Pares suos, &c.* Then the High Steward giveth a charge to the Peers, exhorting them to try the prisoner indifferently according to their evidence.

1 H. 4. 1.

9. The Peers are not sworn, but are charged *Super fidelitatis & ligeantibus Domino Regi debitis*: for so the Record speaketh.

10. When the Kings learned Council give evidence, and produce their proofs for the King against the prisoner.

11. But the prisoner, when he pleadeth not guilty, whereby he denieth the fact, he needs have no advice of Council to that plea. But if he hath any matter of law to plead, as Humfrey Stafford in 1 H. 7. had, viz. the privilege of Sanctuary, he shall have Council assigned him to plead the same, or any other matter in Law: as to plead the generall pardon, or a particular pardon, or the like. And after the plea of not guilty, the prisoner can have no Council learned assigned to him to answer the Kings Council learned, nor to defend him. And the reason thereof is, not because it concerneth matter of fact, for *Ex factis jus oritur*: but the true reasons of the law in this case are, First, that the testimonies and the proofs of the offence ought to be so clear and manifest, as there can be no defence of it. * Secondly, the Court ought to be in stead of Council for the prisoner, to see that nothing be urged against him contrary to law and right: nay, any learned man that is present may informe the Court for the benefit of the prisoner, of any thing that may make the proceedings erroneous. And herein there is no diversity between the Peer and another Subject. And to the end that the trial may be the more indifferent, seeing that the safety of the prisoner consisteth in the indifferency of the Court, the Judges ought not to deliver their opinions before-hand of any criminall case that may come before them judicially. And we read, that in the case of Humfrey Stafford that arch-traytor, Husley Chief Justice besought King Henry the Seventh, that he would not desire to know their opinions before-hand for Humfrey Stafford, for they thought it should come before them in the Kings Bench judicially, and then they would do that which of right they ought; and the King accepted of it. And therefore the Judges ought not to deliver their opinions before-hand upon a case put, and proofs urged of one side in absence of the party accused: especially in cases of high nature, and which deserve so fatall and extream punishment. For how can they be indifferent who have delivered their opinions before-hand without hearing of the party, when a small addition or subtraction may alter the case? And how both it stand with their Oath, who are sworn, That they should well and lawfully serve our Lord the King and his people in the office of a Justice: and they should do equall law, and execution of right to all his subjects, &c. See more of this matter in the 13 Section here following.

In Scotland in all criminall cases, yea in cases of High Treason, *Pars rea* may have Council learned. Vide hereafter upon the statute of 31 Eliz. concerning witnesses. * See more hereof cap. 63. Council learned in Pleas of the Crown.

1 H. 7. fol. 26.

12. There be alwaies either all or some of the Judges ever attendant upon the High Steward, and sit at the feet of the Peers, or about a Table in the midst, or in some other convenient place.

18 E. 3.

13. After all the evidence given for the King, and the prisoners answers, and proofs at large, and with patience heard; then is the prisoner withdrawn from the Bar to some private place under the custody of the Lieutenant, &c. And after that he is withdrawn, the Lords that are triers of the prisoner go to some place to consider of their evidence: and if upon debate thereof, they shall doubt of any matter, and thereupon send to the High Steward to have conference with the Judges or with the High Steward, they ought to have no conference either with the Judges or the High Steward, but openly in Court, and in the presence

Pasch. 26 H. 8. in the case of the Lord Dacres of the North, reported by Justice Spilman, which we have seen.

sence & hearing of the Prisoner; as it was resolved by all the Justices of England in the reign of King H. 8. in the case of the Lord Dacres of the North. And this was a just resolution: for when the Lords should put a case, and ask advice thereupon, the prisoner ought by Law to be present, to see that the case or question be rightly put; and therefore that nothing be done in his absence, until they be agreed on their verdict. Whereupon it followeth, that if the Peers of the Realm, who are intended to be indifferent, can have no conference with the Judges, or with the High Steward in open Court in the absence of the prisoner; a fortiori, the Kings learned Counsell should not in the absence of the party accused, upon any case put, or matter shewed by them, privately procure the opinion of the Judges: and upon so just a resolution the case succeeded well, for the Peers found the Lord Dacres not guilty.

Mag. Chart. ca. 29.

* Resolved by all the Judges Mich. 13 & 14. El. in the case of Tho. Duke of Norff.

1 H. 4. fol. 1.
10 E. 4. 6. b.
13 H. 8. fol. 12.
Tr. 26 H. 8. Spilman's Report.

14. A Noble man cannot waive his triall by his Peers, and put himself up on the triall of the Country, that is, of twelve Freeholders: for the Statute of Magna Charta is, that he must be tried per Pares. And so it was resolved in the Lord Dacres case, Ubi supra.

15. The Peers ought to continue together (as Juries in case of other Subjects ought to do) until they be agreed of their Verdict: and when they are agreed, they all come again into the Court, and take their places: and then the Lord High Steward publicly in open Court, beginning with the puiſne Lord, (who in the case of the Lord Dacre was the Lord Mordant), said unto him, By Lord Mordant, Is William Lord Dacre guilty of the Treasons whereof he hath been indicted or arraigned, or of any of them? And the Lord standing up said, Not guilty: and so upward of all the other Lords seriatim, who all gave the same Verdict. In which case the entry is, Super quo W. Comes E. & ceteri antedicti Pares instantes super fidelitibus & ligeantibus dicto Domino Regi debitis, per prefatum Seneschallum ab inferiori Pare usque ad supremum separatim publice examinati, dicunt, quod W. Dominus Dacre non est culp. &c.

16. The Peers give their Verdict in the absence of the Prisoner, and then is the Prisoner brought to the Bar again: and then doth the Lord Steward acquaint the Prisoner with the Verdict of his Peers, and give judgement accordingly, either of condemnation or acquittal. But it is not so in the case of another Subject: for there the verdict is given in his presence.

Rot. Roman
17 E. 2. m. 6.
Adam Orleton
B. of Hereford
2 H. 4. Marks
B. of Carlisle
Stanf. Pl. Coron.
li. 3. ca. 62. fo. 153.
in Temp. H. 8.

17. Every Lord of Parliament, and that hath voice in Parliament, and called thereunto by the Kings Writ, shall not be tried by his Peers, but only such as sit there ratione Nobilitatis, as Dukes, Marquisses, Counts, Viscounts, or Barons, and not such as are Lords of Parliament ratione Baroniarum, quas tenent in jure Ecclesie, by reason of their Baronies which they hold in the right of the Church, as Archbishops and Bishops, and in time past some Abbots and Priors; but they shall be tried by the Country, that is, by Freeholders, for that they are not of the degree of Nobility.

410 E. 4. 6. b.
Mag. Chart. ca. 29.

18. No Noble man shall be tried by his Peers, but only at the suit of the King upon an indictment of High Treason, or misprision of the same, Petit Treason, murder, or other felony, or misprision of the same. But in case of a Premunire or the like, though it be at the suit of the King, he shall not be tried by his Peers, but by Freeholders. And so in an appeal at the suit of the party for Petit treason, murder, robbery, or other felony, he shall be tried by Freeholders. See more hereof in the second part of the Institutes, Magna Charta, c. 29.

2 Just. 49: 12 Co. 93
Hawd. p. 151: 152
Bro. lib. 153

b 11 E. 3. b. 473.
8 R. 2. proces.
pl. ultimo.
20 E. 4. 6.
20 El. Dier 360.
38 H. 8. Br. treason. Seignior
Sancars case.
Lib. 9. fo. 117.

19. And albeit a man be Noble, and yet no Lord of the Parliament of this Realm, (as if he be a Noble man of Scotland, of Ireland, or France, &c.) he shall be tried by Knights, Esquires, or others of the Commons. And so it is of the Son of a Duke, Marquise, Earl, &c. he is Noble, and called Lord: and yet because he is no Lord of Parliament, he shall be tried as one under the degree of a Peer, and Lord of Parliament.

20. No Peer of the Realm or any other Subject shall be convicted by Verdict, but the said offences must be found by above four and twenty, viz. by twelve or above at his indictment, or by twelve Peers or above, if he be Noble, and by twelve

twelve, and not above, if he be under the degree of Nobility.

21. A Peer of the Realm being indicted of Treason, or Felony, or of misprision, as is aforesaid, and duly transmitted to the Lords, may be arraigned thereof in the upper House of Parliament, as frequently in Parliament Rolls it doth appear: but then there must be appointed a Steward of England, who shall put him to answer: and if he plead not guilty, he shall be tried per Pares suos, and then the Lords Spiritual must withdraw, and make their priories: but no Appeal of Treason can be in Parliament, but is ousted by the statute of 1 H. 4. cap. 14.

22. b And as the beginning (viz. the finding of the indictment by Freeholders) is equal to them both: so the most extreme and heavy judgement, if they be found guilty, is equal to both, &c. which you may read in the first part of the Institutes, Sect. 147.

23. c And though the Commission of the Lord Steward be only in these latter times hac vice, yet may the same be adjourned, as other Commissions hac vice may. And so it was holden in the Lord Dacres Case. And so it was done by the Steward of England in the case of R. Earl of S. and of F. his wife, who adjourned his Commission untill the next day.

24. If execution be not done according to the judgement, then the High Steward in the case of a Peer of the Realm, or the Court or Commissioners in case of another subject, may by their precepts under their seals command execution to be done according to the judgement: but in case of High Treason, if all the rest of the judgement (saving the beheading, which is part of the judgement) be pardoned, this ought to be under the Great Seal of England.

25. And when the service is performed, then is an Oyes made for the dissolving of the Commission; and then is the White Rod, which hath been born and holden before the Steward, by him taken in both his hands, and broken over his head.

Lastly, the Indictments, together with the Record of the arraignment, trial and judgement, shall be delivered into the Kings Bench, there to be kept and enrolled.

Hitherto we have spoken when a Noble-man doth appear, and plead not guilty, and put himself upon his Peers: Now let us see what shall be had against him when he is indicted, and appears not, and cannot be taken: and generally he shall be outlawed per judicium Coronatorum. But how doth that stand with Magna Charta, Nec super eum ibimus, nec super eum mittemus, nisi per legale judicium parium suorum? What is to be intended, when he appears and pleads not guilty, and puts himself upon his Peers: but when he absents himself, and will not yield himself to the due trial of his Peers, then he shall be outlawed per judicium Coronatorum, or else he should take advantage of his own contumacy and flying from judgement. d For proces to be awarded upon the indictment or appeal of treason, felony or trespass, either against a Noble-man or any other, see the statute of 6 H. 6. and 8 H. 6. and if the proces and order prescribed by those statutes be not pursued, the outlawry may be reversed by writ of error, which writ ought to be granted to him ex merito Justiciz, as it was adjudged in Ninian Mervils case: and those statutes do extend as well to the Kings Bench, as to other Courts having by commission power to hear and determine the same, and very few outlawries of treason or felony are of force and validity in law, for that these Acts are not pursued.

And these Acts are well expounded by our * Books, and therefore they shall not need to be recited at large. This is necessary to be added, that the opinion of Stanf. Pl. Cor. 182. l. upon the statute of 33 H. 8. c. 20. is, where the attainder is not erroneous, but lawfull by the course of the law: and so it was resolved, Tr. 28. Eliz. and thereupon the statute of 28 Eliz. c. 2. was made, that no attainder that then was for any High Treason should be reversed for error where the party was executed. But that Act extendeth only to attainders before that Act, and where the party attainted suffered pains of death, as hath been said.

¶ 2

But

10 E. 4. 6.

Rot. Par. 21 R. 2.

Countee de

Arundels case

Rot. Parliam.

5 H. 4. nu. 11, 12.

31 H. 6. num. 49.

Countee de De-

vons case.

28 H. 6. nu. 19.

Duke of Suff.

41 H. 4. cap. 14.

Stanf. Pl. Coron.

182. E. K.

See hereafter

cap. Judgement

and execution.

6 Pasch. 26 H. 8.

ubi supra.

L. 5 E. 4. 33.

12 H. 4. 20.

Mag. Chart. ca. 29.

d See hereafter in

the chapter of

Judgement and

execution concern-

ing reversing of

Outlawries.

6 H. 6. c. 1.

8 H. 6. ca. 10.

Mich. 26. & 27.

Eliz. in bñ de

error coram Re-

ge in Ninian

Mervils case.

Utlary de haut

treason reverse

in Bank le Roy.

* 19 H. 6. fo. 1, 2.

11 H. 6. 54.

1 E. 4. 1. 30 H. 6.

proces 192.

31 H. 6. 11.

Vide F. N. B.

115. l.

Li. Intr. R. f. 122.

Stanf. Pl. cor. 68.

69. 182. l.

28 El. ca. 2.

See the first part
of the Insti. Sect.
26 H. 8. cap. 13.
5 E. 6. cap. 11.
12 El. Dier 287.

* Artic. sup. cart.

cap. 9. 28 E. 1.

20 E. 3. cap. 6.

34 E. 3. c. 4.

42 E. 3. c. 11.

Regist. 178.

Raft. pl. 117.

* 11 H. 4. c. 9.

a Stanf. pl. cor. 87. c.

b Rot. Par. 11 H. 4.

num. 15. in the

Kings Bench.

c Vid. 11 H. 4.

fol. 41.

21 H. 6. 30.

9 E. 4. 16.

3 H. 6. 55.

26 Aff. 28.

d 11 H. 4. 41.

e 14 H. 4. 19.

f 21 E. 3. 5.

15 E. 3. chal. 113.

27 Aff. p. 65.

28 Aff. 24. 22.

49 E. 3. 1. 49 Aff.

1. 28. 43 E. 3.

chal. 94. 6 R. 2.

chal. 102.

7 H. 4. 10.

21 E. 4. 74.

19 H. 6. 9.

21 H. 6. 22.

14 H. 7. 1.

g Nota.

But admitting the proces be awarded according to these statutes, and the truth is, that the party indicted of High Treason (be he noble or other) at the time of the outlawry pronounced, is out of the realm, &c. whether may he avoid the same by writ of error? The answer is, that he might have avoided the same by writ of error at the common law: but now in case of High Treason he is barred of his writ of error by the statutes of 26 H. 8. and 5 E. 6. which statutes are expounded to extend generally to all Treasons, but those statutes extend not to any other offence then High Treason onely, and therefore all other offences remain as they did at the common law for that point.

Now for that all indictments for any offence whatsoever, as well of Noblesmen as of any under the degree of Nobility, ought by the common law of the Realm to be by persons duly returned, and by * lawful liege people, indifferent as they stand unworn, and without any denomination of any: a good and profitable law * was made in that behalf at the Parliament holden in 11 H. 4. in these words. Item because that now of late ^a Inquests were taken at Westm^r of persons named to the ^b Justices, without due return of the Sheriff, of which persons some were ^c outlawed before the said Justices of record, and some fled to Sanctuary for Treason, and some for Felony, there to have refuge; by whom as well many offenders were indicted, as other lawful liege people of our Lord the King, not guilty, by conspiracy, abetment, and false imagination of other persons for their special advantage and singular lucre, against the course of the common law used and accustomed before this time: Our said Lord the King for the greater ease and quietnesse of his people, will and granteth, that the same indictment so made with all the dependence thereof be ^d revoked, adnulled, void, and holden for none for ever; and that from henceforth no indictment be made by any such persons, but by inquest of the Kings lawful ^e liege people, in the manner as was used in the time of his Noble Progenitors, returned by the Sheriffs or Bayliffs of franchises, without any ^f denomination to the Sheriffs or Bayliffs of franchises before made by any person of the names, which by him should be impanelled, except it be by the Officers of the said Sheriffs or Bayliffs of franchises sworn and known to make the same, ^g and other Officers to whom it pertaineth to make the same according to the law of England. And if any indictment be made hereafter in any point to the contrary, that the same indictment be also void, revoked, and for ever holden for none.

The body of this Act consisteth upon two distinct Purviens or Branches, the one to remedy a mischief past, the other to provide for the time to come. The first branch consisteth of a preamble and a purvien: and the preamble containeth these eight parts. First, it sheweth divers inquests had been taken at Westminster by persons named to the Justices. Secondly, without due return of the Sheriff. Thirdly, of which some were outlawed before the said Justices of record. Fourthly, some fled to Sanctuary for Treason, and some for Felony. Fifthly, by whom many offenders were indicted. Sixthly, some not guilty. Seventhly, by conspiracy, &c. Eighthly, that all this was against the course of the common Law. By the body of the Act, it is enacted that the same indictment, with all the dependence thereof, be revoked and made void. Then followeth the second branch or purvien for the time to come, and this purvien consisteth of divers parts: First, in describing by what persons indictments ought to be found, and therein ^{1.} privative, that is, not by any such persons, having reference to the preamble, which persons we have before particularly distinguished; ^{2.} positive, that all indictments must be found by persons of these qualities. ^{1.} They must be the Kings lawfull liege people. ^{2.} Returned by Sheriffs, or Bayliffs of franchises, and other officers to whom it pertaineth. ^{3.} Without any denomination to the Sheriffs, Bayliffs or other officers: and this purvien is in affirmance, and declaratory of the Common law.

The second part of the purvien is introductory of a new law, viz. that if any Indictment be made hereafter in any point to the contrary, that the same indictment be void, revoked, and holden for none. Wherein these two things are to be

be observed : 1. That this is a general law, and extendeth to all indictments for any crime, default, or offence whatsoever : for the words be [if any indictment] generally without naming of any Court, or before whom. 2. If the indictment be found by any persons that are outlawed, or not the Kings lawful liege people, or not lawfully returned, or denominated by any, viz. by all or any of these, that then the indictment is void, for the words be, [if any indictment be made hereafter in any point to the contrary, &c.] Upon this statute in the case of Robert Scarlet before the Justices of Assize at Bury in the County of Suffolk, in Sommer Vacation, 10 J. R. these points were resolved and adjudged. First, where at the Sessions of the Peace holden at Woodbridge in the said County of Suffolk, Robert Scarlet by confederacy between him and the Clerk, that was to read the panel of the grand Jury returned by the Sheriff (whereof he was none, albeit he laboured the Sheriff to have returned him) that the Clerk should read him as one of the Panel, which was done accordingly, & he sworn : It was resolved and adjudged that this case was within this statute, for that he was not returned by the Sheriff. Secondly, that where the rest of the great inquest giving faith to him indicted seventeen honest and good men upon divers penal statutes, which was done by the said Robert Scarlet maliciously : It was resolved and adjudged, that albeit he alone was sworn without the return of the Sheriff, and all the rest duly returned, yet that this case was within this statute, and all the indictments found by him and the rest were void by this statute : for hereby it appeared what mischief such a one might doe. Thirdly, that Robert Scarlet upon this case had offended against the said Act, and might be indicted thereupon : and accordingly he was upon sufficient proof of the fact, as is aforesaid, indicted upon the said Act, and pleaded not guilty, and was found guilty. Fourthly, that this Act extended not onely to indictments of Treason and Felony, but of all other offences and defaults whatsoever, according to the generality of the words. Fifthly, consideration was had of the Act of 3 H. 8. c. 12. and resolved clearly that this statute had not altered the Act of 11 H. 4. in any thing concerning the offence of Scarlet, as upon that which shall be said of the Act of 3 H. 8. shall appear. And upon hearing of Counsel learned what they could say in arrest of judgement, at last judgement was given, that he should be fined and imprisoned, and ordered by the Court that no proces should go out upon the said indictments found by the said great inquest, whereof Scarlet was one.

But notwithstanding this good law, through the subtilty and untrue demeanour of Sheriffs and their Ministers, great extortions and oppressions be and have been committed and done to many of the Kings Subjects by means of returning at Sessions holden within Counties and Shires for the body of the Shire, the names of such persons as for the singular advantage, &c. of the said Sheriffs and their Ministers, will be wilfully forsworn and perjured by the Minister labour of the said Sheriffs and their Ministers, by reason whereof many substantial persons, the Kings true subjects, have been wrongfully indicted of murders, felonies, and misdemeanours ; and sometimes by labour of the said Sheriffs and their Ministers, divers great felonies and murders have been concealed, &c. For remedy of which mischiefs it is enacted by the said statute of 3 H. 8. c. 12. That the Justices of Gaol-Delivery, or Justices of Peace, whereof one to be of the Quorum, in their open Sessions may reform the panel returned by the Sheriff to enquire for the King, by putting to and taking out the names of the persons so impanelled by the discretion of the said Justices, &c. and that the Sheriff shall return the panels so reformed. This Act extends only to Justices of Gaol-Delivery and of the Peace : The body of the Act for offences is general and evident. Vide 11 H. 7. cap. 24.

Nota Lector, that the aforesaid Parliament of 11 H. 4. begun in Quindena Hilarii, Anno 11 H. 4. and the same term, viz. Hil. 11 H. 4. fo. 4. fo. 41. it was according to the said Act of 11 H. 4. resolved by Gascoign Chief Justice, and all the rest of the Justices, that an indictment of felony found by an inquest before 5 H. 4. whereof one was outlawed of felony, and another was acquitted by the general

* 47 E. 3. 1.
7 H. 4. 10.
21 E. 4. 74.

3 H. 8. cap. 12.

Vid. 11 H. 7. c. 24.

Hil. 11 H. 4. f. 41.

Stanf. Pl. Cor. 87,
88. F. tit.
Indictment 25.
& Coron. 89.
Br. tit. indict. 2.

Vid. leſtatures
de 1 R. 3. ca. 4.
33 H. 6. c. 2.
W. 2. ca. 13.
1 E. 3. ſtat. 2.
cap. 17.
All tending that
indictments may
be duly had.
Dier 3. Mar. 131,
132.
Stanf. pl. cor. 90.
35 H. 8. cap. 2.
Mich. 35, &
36 El. in the caſe
of Francis Dacres.

5 El. cap. 1.

Mich. 6 & 7 El.
Dier ſo. 234.
Bonners caſe.

Bract. lib. 3.
fo. 154. b.
*Vincula qui ſen-
ſu, didicit ſuccur-
rere vinſtis.*
Bract. lib. 3. fo.
105. a.
Stanford 78.
Bract. li. 3. f. 137.
Note, Shackles
about the feet
ought not to be,
but for fear of
eſcape.
Mirror c. 2. §. 9.
Brit. c. 5. fo. 14.
b Cap. 11. fo. 17.

generall pardon, ſo as they were not probi & legales homines to enquire as the law willeth, and after the party had pleaded not guilty to the felony, it was awarded, that all the indictments by them found were annulled and made void. Herewith agreeth Stanford in his Pleas of the Crown, fo. 87, & 88. Vide F. tit. Indictment 25. & Coron. 89. and Brook tit. indictment 2. Note the Act ſaith, that they were outlawed beſore themſelves, ſo as the Court may take knowledge thereof of themſelves, or of any other, as amicus curiæ: but the ſafeſt way for the party indicted is to plead, upon his arraignment, the ſpecial matter given unto him by the ſtatute of 11 H. 4. for the overthrow of the indictment, with ſuch averments as by law are required, (agreeable to the opinion of the Lord Brook, ubi ſupra) and to plead over to the felony, and to require council learned for the pleading thereof, which ought to be granted; and alſo to require a copy of ſo much of the indictment as ſhall be neceſſary for the framing of his plea, which alſo ought to be granted. And theſe Laws made for indifferency of Indicters, ought to be conſtrued favourably, for that the indictment is commonly found in the abſence of the party, and yet it is the foundation of all the reſt of the proceeding.

To draw to an end concerning Trials: It is regularly true, that by the Common law the trial ſhall be in the County where the indictment is taken; and by the aforeſaid Act of 35 H. 8. treaſons and miſprifions of treaſons committed or done out of the Realm, &c. ſhall be enquired of, heard and determined beſore the Juſtices of the Kings Bench, &c. Now the caſe fell out upon this ſtatute to be thus: * One was indicted beſore the Juſtices of the Kings Bench, at the Term holden at Hertford, by a Jury of the County of Hertford, for divers high treaſons committed out of this Realm, & after the Term was adjourned to Weſtm. in the County of Midd. The queſtion was, by which of the Counties the party indicted ſhould be tried: And it was reſolved, that he ſhould be tried by men of that County where the indictment was taken. But otherwiſe it is upon the ſtatute of 5 El. ca. 1. the caſe being, that Horn Biſhop of Winch. ſentenced to Edmond Bonner late Biſhop of London, in the County of Surrey, within his Dioceſs, the oath of Supremacy according to the Act of 1 Eliz. which Bonner reſuſed, and this was certified by the Biſhop of Winch. into the Kings Bench, then ſitting at Weſtmiſter in the County of Midd. Now by the ſtatute of 5 El. he that reſuſeth the oath, is to be indicted of a Premunire by a Jury of Midd. as a Jury of that County might do for any offence done in that County, and extendeth only to the indictment, where the words of the Act of 35 H. 8. be, [ſhall be enquired of, heard and determined,] the queſtion upon the ſtatute of 5 Eliz. was, if Bonner ſhould appear and plead not guilty, by what County he ſhould be tried, whether by a Jury of Midd. where the indictment was, or by a Jury of Surrey, where the offence was committed; and reſolved that he ſhould be tried by a Jury of Surrey: for the ſtatute of 5 El. extendeth to the indictment only, and leaveth the trial to the Common Law, which appointeth the trial to be where the offence is committed, and ſo a manifeſt diverſity between the two caſes: for regularly by the Common Law in all Pleas of the Crown, Debet quis juri ſubjacere, ubi deliquit.

It is now neceſſary to be known, how Priſoners (to ſpeak once for all) committed for treaſon or any other offence ought to be demeaned in Priſon. Bract ſaith, Solent præſides in carcere continendos damnare, ut in vinculis contineantur: ſed hujusmodi interdicta ſunt à lege, quia carcer ad continendos, non ad puniendos haberi debeat. And in another place he ſaith, Cum autem taliter captus coram Juſtic. eſt producendus, produci non debet ligatis manibus, (quamvis interdum geſtans compedes propter evaſionis periculum,) & hoc ideo, ne videatur coactus ad aliquam purgationem ſuſcipiendam.

a If felons come in judgement to answer, &c. they ſhall be out of Irons, and all manner of Bonds, ſo that their pain ſhall not take away any manner of reaſon, nor them conſtrain to answer, but at their free will. b And in another place he ſaith, And of priſoners we will that none ſhall be put in Irons, but thoſe which

which shall be taken for felony, or trespass in Parks or Libraries, or which be found in arreages upon account, and we defend that otherwise they shall not be punished nor tormented. *c Omnes autem attachabiles licet vicecomiti in prisona custodire, &c. non tamen ad puniend, sed ad custodiend, &c. d It is an abuse that Prisoners be charged with Irons, or put to any pain before they be attained.*

e Quidam sacerdos arraniatus de feloniam posuit se super patriam, & stetit ad barram in ferris, sed per preceptum Justic. liberatur a ferris. And there is no difference in Law as to a Priest and a Layman, as to Irons.

f Presentat quod ubi quidam Robertus Bayhens de Tanesby captus fuit, & in prisona castri Lincoln detentus pro quodam debito Statut. mercatorii in custodia Tho. Boteler Constabularii castri de Lincoln ibi preed. Tho. le Boteler posuit ipsum Robertum in profundo Gaole inter lenones in vili prisona, contra formam Statut. &c. & eodem profundo detinuit, quousque idem Robertus fecit finem cum eo de 40. s. quos ei solvit per extorsionem.

So as hereby it appeareth, that where the law requireth that a Prisoner should be kept in salva & arcta custodia, yet that must be without pain or torment to the Prisoner.

Hereupon two questions do arise, when and by whom the Rack or Brake in the Tower was brought in.

To the first, John Holland Earl of Huntingdon was by King H. 6. created Duke of Exeter, and Anno 26 H. 6. the King granted to him the office of the Constableship of the Tower. He and William de la Poole Duke of Suffolk, and others, intended to have brought in the Civil Lawes. For a beginning whereof, the Duke of Exeter being Constable of the Tower, first brought into the Tower the Rack or Brake allowed in many places by the Civill Law: and thereupon the Rack is called the Duke of Exeters Daughter, because he first brought it thither.

To the second upon this occasion, Sir John Fortescue Chief Justice of England wrote his Book in commendation of the lawes of England, and therein preferreth the same for the government of this country before the Civil Law; and particularly that all tortures and torments of parties accused were directly against the Common Lawes of England, and sheweth the inconvenience thereof by fearful example: to whom I refer you, being worthy your reading. So as there is no law to warrant tortures in this land, nor can they be justified by any prescription being so lately brought in.

And the Poet in describing the iniquity of Rhadamachus, that cruel Judge of Hell, saith,

Castigatque, additque dolos, subigitque fateri.

First, he punished before he heard, and when he had heard his deniall, he compelled the party accused by torture to confesse it. But far otherwise doth Almighty God proceed, postquam reus diffamatus est, 1. Vocat, 2. Interrogat, 3. Judicat. To conclude this point, it is against Magna Charta, cap. 29. Nullus liber homo, &c. aliquo modo destruat, nec super eum ibimus, nec super eum mittimus, nisi per legale iudicium parium suorum, aut per legem terræ. And accordingly all the said ancient Authors are against any pain or torment to be put or inflicted upon the Prisoner before attainer, nor after attainer, but according to the judgement. And there is no one opinion in our Books, or iudiciall Record (that we have seen and remember) for the maintenance of tortures and torments, &c.

And now, to conclude this Chapter of Treason, It appeareth in the holy Scripture that traitors never prospered, what good soever they pretended, but were most severely and exemplarily punished. As *a* Corah, Dathan and Abiram, by miracle: *Dirupta est terra sub pedibus eorum, & aperiens os suum devoravit illos, &c.* *b* Athalia the Daughter of Amri, interfecta est gladio. *c* Baga-tha and Thara against Asuerus: *Appensus est uterque eorum in patibulo.* *d* Absolon against David: *Suspensus in arbore, & Joab infixit tres lanceas in corde ejus.* *e* Achitophel with Absolon against David: *Suspendio interit, he hanged himself.*

W. 2. c. 1. after judgement.

Lib. 3. fol. 44.

Lib. 8. fo. 100.

24 H. 8. Dier 249.

Pl. Com. 360. a.

c Fleta lib. 1. ca. 6.

d Mirror c. 5. §. 1.

e 8 E. 2. cor. 432.

f Tr. 7. E. 3. coram rege Rot. 44.

** 1 E. 3. c. 7.*

Tortures, the rack, &c.

Rot. Pat. 26 H. 6.

Rot. Parl.

28 H. 6. num. 30.

Hollenshed, pag. 670, &c. Innocentem cogit mentiri dolor. Fortescue, ca. 22. fo. 24.

Virgil.

Luke 16. 1, 2. &c.

John 7. 51. Nun-

quid lex nostra

judicat hominem

nisi prius audierit

ab ipso?

Proditor illudit

verbis, dum ver-

bera cudir.

a Numb. 16. 31,

32. & 27. 3.

b 2 Reg. 11. 16.

c Esth. 12. 2, 3.

d 2 Sam. 18. 9, 14.

e 2 Sam. 17. 23.

f 1 Reg. 2. 26, 27.

g 2 Sam. 16. 5, 6.

i 1 Reg. 2. 8, & c. 46.

h 1 Reg. 16. 9,

& c. 18.

i Act. Apost. 5.

36, 37.

k Act. Apost. 1. 18.

Matth. 27. 5. laqueo

se suspendit.

Qui molitur in-

diar in patriam,

id facit quod infa-

mus nauta perso-

rans navem in

qua ipse vehitur.

* Felix quem sa-

ciunt aliena peri-

cula caurum.

Prov. 24. 21.

himself. f Abiathar the traitferous High Priest against Solomon: Abiathar Sa-
cerdoti dixit Rex, &c. Et quidem vir mortis es, sed hodie te non interficiam, &c.
Ejecit ergo Solomon Abiathar, ut non esset Sacerdos. g Shimei against David,
gladio interfectus. h Zimri against Ela, who burnt himself. i Theudas, qui occi-
sus est, & circiter 400 qui credebant ei dispersi sunt & redacti ad nihilum: and Ju-
das Galilæus, ipse perit, & omnes quotquot consenserunt ei dispersi sunt. Lastly,
k Judas Iſcariot, secundum nomen ejus, vir occisionis, the traytor of traytors: Et
hic quidem possedit agrum de mercede iniquitatis suæ, & suspensus crepuit medius,
& diffusa sunt omnia viscera ejus.

Peruse over all our Books, Records and Histories, and you shall finde a prin-
ciple in Law, a rule in Reason, and a trial in Experience, That Treason doth
ever produce fatall and finall destruction to the offender, and never attaineth to
the desired end, (two incidents inseparable thereunto.) * And therefore let all
men abandon it, as the most poisonous bait of the Devill of Hell, and follow
the precept in holy Scripture, Fear God, honour the King, and have no com-
pany with the Seditious.

See more of Treason in the next Chapter of Misprision, &c. and in Principal
and Accessory, in the title of Judgement and Execution: and in the Chapter
of Monomachia, single combate, &c. the residue of this Act of 25 E. 3.

CAP. III.

Of Misprision of Treason.

Misprision proditi-
onis.

See Bract. lib. 3.

fo. 118. b. & 119. a.

See hereafter cap.

65. of misprisions,

&c.

See hereafter in

Thefibore, cap. 61.

i & 2 Ph. & Mar.

ubi supra.

See 1 E. 6. cap. 12.

and 1 El. cap. 6.

25 H. 8. cap. 12.

* Hil. 14 El. cited

by the Lo. Dier

in the Lo. Lum-

leyes case, M. S.

a 14 El. cap. 3.

b 13 El. cap. 2.

c 2 R. 3. fol. 9.

Stanf. 57. c.

Misprision cometh of the French word Mespris, which properly signi-
fieth neglect or contempt: for [mes] in composition in the French sig-
nifieth mal, as mis doth in the English tongue, as mischance, for an ill chance;
and so mesprise is ill apprehended or known. In legall understanding it signifi-
eth, when one knoweth of any treason or felony, and concealeth it; this is mis-
prision, so called, because the knowledge of it is an ill knowledge to him, in re-
spect of the severe punishment for not revealing of it: For in case of misprision
of High Treason he is to be imprisoned during his life, to forfeit all his goods,
debts and duties for ever, and the profits of his lands during his life; and in
case of Felony, to be fined and imprisoned. And in this sense doth the said sta-
tute of 1 & 2 Ph. & Mar. speak, when it saith, Be it declared and enacted by the
authority aforesaid, that concealment or keeping secret of any High Treason be de-
emed and taken only misprision of Treason, and the offenders therein to forfeit and
suffer as in cases of misprision of Treason hath heretofore been used. * But by the
Common law concealment of High Treason was treason, as it appeareth in
the case of the Lord Scrope, An. 3 H. 5. and by Bracton lib. 3. fo. 118. b. & 119. a.

a It is misprision of High Treason, for forging of money, which neither is the
money of this Realm of England, nor currant within the same.

b Misprision of High Treason in concealing of a Bull, &c. See the statute.

c It is said in 2 R. 3. that every treason or felony includeth in it a misprision
of treason or felony. Therefore if any man knoweth of any High Treason, he
ought with as much speed as conveniently he may to reveal the same to the
King, or some of his Privy Council, or any other Magistrate. And misprision in
a large sense is taken for many great offences which are neither treason nor
felony, whereof we shall speak more hereafter, being in this place restrained
to misprision of treason.

See John Coniers Case Dier 296. That the receiving of one that hath coun-
terfeited the Kings Coin, and comforting of him knowing him to have coun-
terfeited the Kings Coin, is but misprision.

See more of Misprision of Treason in the Chapters of High Treason, and of
Principal and Accessory.

CAP. IV.

Felony by compassing or conspiring to kill the King, or any Lord, or other of the Kings Counsell.

NExt hereunto we have thought good to speak of the Statute of 3 H. 7. the letter of which law ensueth. 3 H. 7. ca. 14.

Item, Forasmuch as by quarrels made to such as have been in great authority, office, and of counsell with Kings of this Realm, hath ensued the destruction of Kings, and the undoing of this Realm; so as it hath appeared evidently, when compassing of the death of such as were of the Kings true Subjects was had, the destruction of the Prince was imagined thereby; and for the most part it hath grown and been occasioned by envy and malice of the Kings own household-servants, as now of late such a thing was likely to have ensued: * and for so much as by the law of this land, if actuall deeds be not had, there is no remedy for such false compassings, imaginations, and confederacies had against any Lord, or any of the Kings Counsell, or any of the Kings great Officers in his Household, as Steward, Treasurer, & Comptroller; and so great inconveniencies might ensue, if such ungodly demeaning should not be straitly punished before that actuall deed were done: Therefore it is ordained by the King, the Lords Spirituall and Temporall, and the Commons of the said Parliament assembled, and by authority of the same, That from henceforward the Steward, Treasurer, and Comptroller of the Kings house for the time being, or one of them, have full authority and power to enquire by Twelve sad men, and discreet persons of the Chequer Roll of the Kings honourable household, if any servant admitted to be his servant sworn, and his name put into the Chequer Roll of his household, whatsoever he be, serving in any manner, office, or room, reputed, had and taken, under the state of a Lord, make any confederacies, compassings, conspiracies, or imaginations with any person or persons, to destroy or murder the King, or any Lord of this Realm, or any other person sworn to the Kings Counsell, Steward, Treasurer, or Comptroller of the Kings house; that if it be found before the said Steward for the time being, by the said twelve sad men, that any such of the Kings servants as is abovesaid, hath confederated, compassed, conspired, or imagined, as is abovesaid, that he so found by that Inquiry, be put thereupon to answer. And the Steward, Treasurer, and Comptroller, or two of them, have power to determine the same matter according to the Law. And if he put him in tryall, that then it be tryed by other twelve sad men of the same household: and that such misdoers have no challenge, but for malice. And if such misdoers be found guilty by confession, or otherwise, that the said offence be judged felony, and they to have judgement and execution, as felons attainted ought to have by the Common Law.

¶

This

This Act divideth it self into two generall parts, viz. the Preamble, and the body of the Act. In the Preamble Three things are to be observed.

1. That by quarrells made to such as are in great Authority, office, and of Counsel with the Kings of the Realm, have ensued the destruction of the Kings, and the undoing of the Realm, as in the Records of Parliament, and Histories of King E. 1. R. 2. King H. 6. &c. you may read. And as King William Rufus was slain in the new Forest by the glance of an arrow: so the overthrow of the King, &c. hath followed by glances and consequents, when the bow of destruction hath been aimed at the overthrow of those who were in great Authority near about, and dear to the King, not daring in direct manner to aim at the King himself. Therefore the first conclusion is, that when the compassing of the death of such as were of the Kings true Subjects was had, the destruction of the Prince was imagined thereby.

2. That for the most part, it hath grown by envy and malice by the Kings own household servants: and the reason thereof is, for that they being of the Kings household, have greater and readier meanes, either by night or by day, to destroy such as be of great Authority, and near about the King: and such an attempt and conspiracy was before this Parliament made by some of this Kings household servants, and great mischief was like thereupon to have ensued, which was the cause of the making of this Act.

3. The conclusion of the Preamble is, that by the law of the Land, if actually deeds be not had, there is no remedy for such false compassings, &c. This is a true declaration: For the bare conspiracy of the death of any Lord or other of the Kings Council, or of the Steward, Treasurer or Comptroller, unless they had been slain indeed, was no felony before this Act, and so resolved upon the contempt and conspiracy aforesaid.

In the body of this Act, Six things are enacted. First, that the offender must have three qualities. 1. He must be the Kings servant sworn. 2. His name must be put in the Cheque Roll of the Kings household. 3. He must be under the state of a Lord: & if he conspire with any other that is not of the Kings household, yet is the conspiracy within this Act, but he of the Kings household is only the felon within the purview of this statute, as it appeareth by the words of the statute.

Secondly, Against what persons the offence made felony by this Act is to be committed: and in number they be four. 1. To destroy or murder the King. By this Act it expressly appeareth by the judgement of the whole Parliament, that besides the confederacy, compassing, conspiracy or imagination, there must be some other overt act or deed tending thereunto, to make it treason within the statute of 25 E. 3. And therefore the bare confederacy, compassing, conspiracy, or imagination by words only, is made felony by this Act. But if the Conspirators do provide any weapon, or other thing, to accomplish their devilish intent, this and the like is an overt act to make it treason. 2. Any Lord of this Realm being sworn of the Kings Council: for by the purview of this Act, he must be also of the Kings Council: this is understood of the Kings Privy Council, and so throughout the Act. 3. Any other of the Kings Council (that is, the Kings Privy Council) being under the degree of a Lord. 4. The Steward, Treasurer, and Comptroller of the Kings household, being great officers, though they be not of the Kings Council.

Thirdly, The third general part expresseth the persons to whom power is given to enquire and determine this felony. The Steward, Treasurer, & Comptroller, or any one of them may enquire. And they or two of them have power by this Act to hear & determine the same: and though the words be for the Inquiry, that they three or any of them, &c. yet an indictment taken before two of them is good, because it is for advancement of Justice. And this Act is in nature of a Commission to them, for other Commission they need not to have: and this you may see in divers other Acts of Parliament of like nature. If any the household servants conspire the death of the Steward, Treasurer, and Comptroller, yet by force of this Act they are Judges of the cause, & none other can be, & in that case they

See before in the
chapt. of High
treason. Verb.
Overt Act.

See before in the
chapt. of High
Treason, ubi sup.

18 E. 3. 1.
23 Ad. 17.
27 H. 6. 8.
27 H. 8. 13.

they will assist themselves for their direction with some grave and learned men in the lawes. But if the death of any one of them be compassed, then it is more convenient that it be heard and determined before the other two.

Fourthly, the fourth part setteth forth, first, how the Inquiry, and after the trial shall be made, that is, that the Inquiry must be made by twelve sad men and discreet persons of the Cheque Roll of the Kings household; and when the offender hath pleaded not guilty, the trial shall be by the like persons. And here though this Act limiteth the inquiry to be by twelve, yet if it be inquired of by more then twelve, the presentment is good, but the trial must be by twelve onely.

Fifthly, no challenge shall be made but for malice.

Sixthly, by the context of the whole Act, the conspiracy that is to be heard and determined by this Act must be plotted to be done within the Kings household.

Vide lib. Plac.
Coke fo. 482.

Co. Entn.
402;

The offender against this Statute shall have the benefit of his Clergy: for whensoever Felony is made by any Statute, and the benefit of Clergy is not expressly taken away, the offender shall have his Clergy.

See the Statute of 3 & 4 E. 6. whereby amongst other things in some case it was High treason, and in some case felony, to intend, or go about to kill or imprison any of the Kings Privy Councill, &c. from which felony the benefit of Sanctuary and Clergy was taken away: but these treasons and felonies are repealed by the Statute of 1 Mar.

3 & 4 E. 6. cap. 5.

CAP. V.

Of Heresie.

Concerning Heresy five things fall into consideration. First, who be the Judges of Heresy. Secondly, what shall be adjudged Heresy. Thirdly, what is the judgement upon a man convicted of Heresy. Fourthly, what the law alloweth him to save his life. Fifthly, what he shall forfeit by judgement against him.

Touching the First, an Heretick may be convicted * before the Archbishop and other Bishops, and other the Clergy at a general Synod or Convocation, as it appeareth both by our books and by history. See the Statute of 25 H. 8. cap. 19. revived by 1 El. cap. 1.

a Bracl. l. 3. f. 123.
& 124. in Conc.
Oxon. Newburg.
l. 2. cap. 13.
6 H. 3. Stow.
Holl. 203.
2 H. 4. Rot. Parl.
nu. 29. Sautrics
case.
Fitz. N.B. 269.
1 El. cap. 1.
b Vide 23 H. 8.
cap. 9. F.N.B.
ubi supra.
5 El. cap. 23.
10 H. 7. 17. b.
Doct. & Stud.
lib. 2. cap. 29.
Br. 2. Mar. tit.
Heresy 1.

b And the Bishop of every Dioces may convict any for Heresie, and so might he have done before the Statute of 2 H. 4. cap. 15. as it appeareth by the preamble of that Act in these words;

Whereas the Diocesans of the said Realm cannot by their jurisdiction spirituall, without aid of the said royall Majesty, sufficiently correct the said false and perverse people, (i. Hereticks, named before) because the said false and perverse people do goe from Dioces to Dioces, and will not appear before the said Diocesans, but the same Diocesans and their Jurisdiction spirituall, and the keys of the Church with the censures of the same, do utterly contemn and despise.

Now that Statute both provide, that the Diocesan of the same place, such person or persons, &c. may cause to be arrested, and under safe custody in his prisons to be detained. From this Act and other Acts and Authorities quoted in the margin, these Two conclusions are to be gathered. First, that the Dio-

Mat. Hammond
Anno 21 El.
Holl. 1579.
Stowe 1161.
Hil. 9 Ja. Regis.
Legates case.

Vide 1 E. 6. c. 12.
1 El. c. 1.

23 H. 8. cap. 9.

1 El. cap. 7.

5 R. 2. Stat. 2.
cap. 5. repealed by
1 E. 6. cap. 12. &
1 Eliz. cap. 1.
* In diebus illis
Masters of Divi-
nity and Bachel-
lors of Divinity,
now Doctors of
Divinity and
Bachelors.
a Rot. clauf.
19 R. 2. m. 17.
in Dom.
b Exod. 20. 4.
Levit. 26. 1.
Deut. 5. 8.
& 16. 22.
Psal. 97. 7.
1 John 5. 21.
c Rot. Parl.
6 R. 2. nu. 62.
Vide 7 H. 4. nu.
62. Rot. Parl.

colan hath jurisdiction of Heresy, and so it hath been put in ure in all Queen Elizabeths reign: and accordingly it was resolved by Fleming Chief Justice, Tanfield Chief Baron, Williams and Crook Justices, Hil. 9 Ja. R. in the case of Legate the Heretick, and that upon a conviction before the Ordinary of Heresy, the writ of De Hæretico comburendo doth lie. Secondly, that without the aid of that Act of 2 H. 4. the Diocesan could imprison no person accused of Heresy, but was to proceed against him by the censures of the Church. And now seeing that not only the said Act of 2 H. 4. but 25 H. 8. cap. 14. are repealed, the Diocesan cannot imprison any person accused of Heresy, but must proceed against him, as he might have done before those Statutes, by the censures of the Church, as it appeareth by the said Act of 2 H. 4. cap. 15. Likewise the supposed Statute of 5 R. 2. c. 5. and the Statutes of 2 H. 5. c. 7. 25 H. 8. c. 14. 1 & 2 Ph. & Mar. 46. are all repealed, so as no Statute made against Hereticks standeth now in force: and at this day no person can be indicted or impeached for Heresy before any temporal Judge, or other that hath temporal jurisdiction, as upon perusal of the said Statutes appeareth.

Every Archbishop of this Realm may cite any person dwelling in any Bishops Diocess within his province for causes of Heresy, if the Bishop or other Ordinary immediate thereunto consent, or if that the same Bishop, or other immediate Ordinary or Judge do not his duty in punishment of the same.

1. Touching the second point, if any person be charged with Heresy before the High Commissioners, they have no authority to adjudge any matter or cause to be Heresy, but only such as hath been so adjudged by the authority of the Canonical Scripture, or by the first four general Councils, or by any other general Council, wherein the same was declared Heresy by the express and plain words of the Canonical Scripture, or such as shall hereafter be determined to be Heresy by Parliament, with the assent of the Convocation: for so it is expressly provided by the said Act of 1 El. And albeit this Proviso extendeth only to the said high Commissioners, yet seeing in the high Commission there be so many Bishops, and other Divines and Learned men, it may serve for a good direction to others, especially to the Diocesan, being a sole Judge in so weighty a cause.

No manner of Order, Act or Determination for any matter of Religion or cause Ecclesiastical, had or made by the Authority of the Parliament in Anno 1 El. shall be accepted, deemed, interpreted or adjudged Heresy, Schism or Schismatical opinion, any order, decree, sentence, constitution, or law (whatsoever the same be) notwithstanding.

There was a Statute supposed to be made in 5 R. 2. that Commissions should be by the Lord Chancellor made and directed to Sheriffs and others, to arrest such as should be certified into the Chancery by the Bishops and Prelates, Masters of Divinity, to be preachers of heresies and noxious errors, their followers, maintainers and abettors, and to hold them in strong prison until they will justify themselves to the law of holy Church. By colour of this supposed Act, a certain persons that held that images were not to be worshipped, &c. were holden in strong prison until they (to redeem their vocation) miserably yielded before these Masters of Divinity to take an oath, and did swear to worship images, which was against the moral and eternal law of Almighty God. We have said (by colour of the said supposed Statute, &c.) not only in respect of the said opinion, but in respect also that the said supposed Act was in truth never any Act of Parliament, though it was entered in the Rolls of the Parliament, for that the Commons never gave their consent thereunto. And therefore in the next Parliament the Commons preferred a bill reciting the said supposed Act, and constantly affirmed that they never assented thereunto, and therefore desired that the said supposed Statute might be annulled and declared to be void: for they protested that it was never their intent to be justified, and to bind themselves & their successors to the Prelates, more then their Ancestors had done in times past: & hereunto the King gave his royal assent in these words, y pleist au Roy.

Roy. And mark well the manner of the penning the Act: for seeing the Commons did not assent therunto, the words of the Act be, It is ordained and assented in this present Parliament, that, &c. And so it was, being but by the King and the Lords.

It is to be known that of ancient time, when any Acts of Parliament were made, to the end the same might be published and understood, especially before the use of Printing came into England, the Acts of Parliament were ingrossed into parchment, and bundled up together with a writ in the Kings name under the great seal to the Sherif of every County, sometime in Latin and sometime in French, to command the Sherif to proclaim the said Statutes within his bailiwick, as well within liberties as without. And this was the course of Parliamentary proceedings before printing came in use in England, and yet it continued after we had the print, till the reign of H. 7.

Now at the Parliament holden in 5 R. 2. John Braibrook Bishop of London being Lord Chancellor of England, caused the said Ordinance of the King and Lords to be inserted into the Parliamentary writ of Proclamation to be proclaimed amongst the Acts of Parliament: which writ I have seen: the purclose of which writ, after the recital of the Acts directed to the Sherif of N. is in these words, Nos volentes dictas concordias five ordinationes in omnibus & singulis suis Articulis inviolabiliter observari, tibi precipimus quod predictas concordias five ordinationes in locis infra balivam tuam, ubi melius expedire volueris, tam infra libertates quam extra, publice proclamari & teneri facias juxta formam prenotatam. Teste Rege apud Westm. 26 Maji, Anno Regni Regis R. 2. 5. But in the Parliamentary proclamation of the Acts passed in Anno 6 R. 2. the said Act of 5 R. 2. whereby the said supposed Act of 5 R. 2. was declared to be void, is omitted: and afterwards the said supposed Act of 5 R. 2. was continually printed, and the said Act of 6 R. 2. hath by the Prelates been ever from time to time kept from the print.

Certain men called Lollards were indicted for heresy, upon the said Statute of 1 H. 4. for these opinions, viz. Quod non est meritorium ad Sanctum Thomam, nec ad Sanctam Mariam de Walsingham peregrinari. 2. Nec imagines Crucifixi & aliorum Sanctorum adorare. 3. Nulli sacerdoti confiteri nisi soli Deo, &c. Which opinions were so far from heresy, as the makers of the Statute of 1 Eliz. had great cause to limit what heresy was.

And afterwards they thought not good to contain these opinions in any Indictment, but indicted them in general words: one of which indictments as to Lollardy and Heresy followeth. Jurati dicunt super eorum Sacramentum, quod A. R. E. D. Lollardi & falsi Hæretici die Jovis post hebdomadam Pasche, Anno regni Regis H. 6. post conquestum nono, apud Abendon in Com Berks infra virg. falsò & proditoriè ut communes proditores & insurrectores conspiraverunt, imaginati fuerunt, & ad invicem confederaverunt cum quamplurimis proditoribus illis associatis, & felonibus de eorum comitiva, & eorum falsa malicia præcogitata, ut communes Insidiatores aliorum viarum, ad fidem catholicam destruedam, & ibidem falsò & proditoriè, ut communes proditores & felones dicti domini Regis, fecerunt & scripserunt diversas falsas billas & scripturas seditiosas, & nonnulla fidei & doctrinæ Christianæ contraria continentes, & eas populo domini Regis publicandas & credendas falsò, damnabiliter in diversis locis, viz. in civitatibus London, Sarum, & villis de Coventria & Marleburgh, nequiter posuerunt, fixerunt & projecerunt, ac indies sic scribere, affigere & projicere & ponere non cessant, nec formidant, in gravissimam majestatis & coronæ dignitatis Regis nostri offensam, & Christianæ fidei ludibrium, & pacis dicti domini regis perturbationem, & omnium Christi fidelium injuriam & contemptum. Which general indictment, and all other of like form, were utterly insufficient in law: For albeit the words of the Statute be general, yet the indictment must contain certainty, whereunto the party indicted may have an answer. Also where the parties are indicted ut communes insidiatores viarum, that also is insufficient, as it appeareth by the Statute of 4 H. 4. cap. 2.

Coram Rege
Hil. 1 H. 5.
Rot. 4 & 5.

Indictment general.
Vide supra ca. 1.
Verbo, Per overt
fait.
Lollardi & falsi
Hæretici.

Communes Insidiatores viarum.
Vide supra c. 1. f. 5.
Ad fidem Catholicam destruedam.
Diversas falsas
billas & scripturas, &c.

Mich. 5 E. 4. Rot.
143. Coram Re-
ge.
In rationabili
parte bonorum.

John Keyser was excommunicated by the greater excommunication before Thomas Archbishop of Canterbury, and Legate of the Apostolick See, at the suit of another, for a reasonable part of goods, and so remained eight months. The said Keyser openly affirmed that the said sentence was not to be feared, neither did he fear it. And albeit the Archbishop or his Commissary hath excommunicated me, yet before God I am not excommunicated: and he said that he spake nothing but the truth. And it so appeared; for that he the last harvest standing so excommunicate, had as great plenty of wheat and other grain as any of his neighbours, saying to them in scorn (as was urged against him) that a man excommunicate should not have such plenty of wheat. The Archbishop denying these words to be within the said Act of 2 H. 4. did by his warrant in writing comprehending the said cause, by pretext of the said Act commit the body of the said Keyser to the Gaole at Maidstone, for that (saith he) in respect of the publishing of the said words, dictum Johannem non immerito habemus de heresi suspectum. By reason whereof the said John Keyser was imprisoned in Maidstone Gaol, & in prison detained under the custody of the keeper there, until by his counsell he moved Sir John Markham then Chief Justice of England, and other the Judges of the Kings Bench, to have an Habeas corpus, and thereupon (as it ought) an Habeas corpus was granted: Upon which writ the Gaoler returned the said cause and special matter, and withall, according to the writ, had his body there. The Court upon mature deliberation perusing the said Statute, and upon conference with Divines, resolved, that upon the said words Keyser was not to be suspect of Heresy within the said Statute, as the Archbishop took it. And therefore the Court first bailed him, and after he was delivered: for that the Archbishop had no power by the said Act for those words to commit him to prison.

Mich. 11 H. 7.
Rot. 327. In com-
muni banco.

Hillary Warner being an Inhabitant within the parish of S. Dunstons in the West, held opinion, and published there and in divers other places, quodd non tenebatur solvere aliquas decimas Curatori, five Ecclesie parochiali ubi inhabitabat. Whereupon Richard Bishop of London commanded Edward Vaughan and others to arrest the said Hillary Warner: by force whereof they did arrest him, and detained him in prison a day and a night, and then he escaped. Hillary Warner brought his Action of false imprisonment against Edward Vaughan and others: In bar whereof the Defendants pleaded the Statute of 2 H. 4. and that the Plaintiff held and published the opinion aforesaid: which opinion was contra fidem Catholicam, seu Determinatione Sancte Ecclesie; and that the Defendants, as servants to the said Bishop and by his commandment, did arrest the Plaintiff, and justified the imprisonment: whereupon Hillary Warner the Plaintiff demurred in law, and after long and mature deliberation it was by Brian Chief Justice and the whole Court of Common Pleas adjudged, that the said opinion was not within the said Statute of 2 H. 4. for that it was an error, but no Heresy. Which I have the rather reported, for that the Reporter of this case did not only misreport the time of the bringing of the Action, but the Statute, which was the ground of the matter in law, and leaveth out the judgement. The Record it self is worthy the reading.

Hil. 10 H. 7. fo. 17.

Upon that which hath been said touching the said Statute of 2 H. 4. Four conclusions do necessarily follow. First, that seeing that many opinions were by the Bishops taken to be Heresy which in troth had no shadow of Heresy, and so mistaken, and unjustly extended by the Bishops further then the Purvien and true intention thereof, as by that which hath been and might be said, appeared, the makers of the said Act of Parliament of 1 El. had great reason to limit (as hath been said) what opinions should be judged Heresy by authority of that commission grounded upon that Act. Secondly, that if any Ecclesiastical Judge or Commissioner shal by pretext of any Statute, or other cause, commit any man to prison, upon motion in Court on the behalf of the party imprisoned, the Judges of the Common Law ought to grant an Habeas corpus for him: upon the return of which writ if it shall appear to the Judges that the imprisonment is well warranted

See in the second
part of the Insti-
tutes, the exposi-
tion upon the Sta-
ture of Artic.
Cleri, the reso-
lution of all the
Judges of Eng-
land to the 21 and
22 articles or ob-
jections.

warranted by law, the party shall be remanded: and if the imprisonment be without warrant of Law, then the party ought to be delivered. Thirdly, if the imprisonment be not warranted by Law, the party imprisoned may have his action of false imprisonment, and recover his damages. Fourthly, that when an Act of Parliament is made concerning matter merely spirituall, as Heresie, &c. yet that Act being part of the Laws of the Realm, the same shall be construed and interpreted by the Judges of the Common Laws, who usually confer with those that are learned in that profession. But let us now descend to the third point.

3. To the third. ^a It appeareth by Bracton, Britton, Fleta, Stanford, and all our Books, that he that is duly convicted of Heresie shall be burnt to death.

4. To the fourth. ^b The Ecclesiasticall Judge at this day cannot commit the person that is convicted of Heresie to the Sherif, albeit he be present, to be burnt; but must have the Kings Writ De heretico comburendo, according to the Common Law: for now all Acts of Parliament (as hath been said before) against Hereticks are repealed. And the reason wherefore Heresie is so extremely and fearfully punished, is, for that Gravius est eternam quam temporalem ledere majestatem: and Hæresis est lepra animæ. ^c The party duly convicted of Heresie may recalc and abjure his opinion, and thereby save his life, but a Relapse is fatal. For as in case of a disease of the body, after recovery, recidivation is extremely dangerous: so in case of Heresie (a disease of the soul) a relapse is irrecoverable. And as he that is a Leper of his body, is to be removed from the Society of men, lest he should infect them, by the Kings Writ De leproso amovendo: so he that hath lepram animæ, that is, to be convicted of Heresie, shall be cut off, lest he should poison others, by the Kings Writ De heretico comburendo. But if the Heretick will not after conviction abjure, he may by force of the said Writ ^d De heretico comburendo be burnt without abjuration.

5. As to the fifth. ^e The Statute made in the 2 year of H. 5. cap. 7. whereby the forfeiture of lands in fee simple and goods and chattells was given in case of Heresie, standeth repealed by the Act of 1 Eliz. cap. 1. The Books that speak of this forfeiture are grounded upon the said Act of 2 H. 5. which then stood in force, saving 5 R. 2. which was before that Statute: for there, though Belknap swore, Per ma foy si home soit miscreant, sa terre est forfeitable, & le seignour avera ceo p voy descheat; yet was his opinion never taken for law: for neither lands nor goods before the making of that Statute of 2 H. 5. were forfeited by the conviction of Heresie, because the proceeding therein is merely spirituall, pro salute animæ; and in a Court that is no Court of Record. And therefore the conviction of Heresie worketh no forfeiture of any thing that is temporall, viz. of lands or goods. ^f For what cause the said Hereticks were called Lollards you may read in Caudries case, and Linwood thereto agreeth. ^g And it is to be observed, that in proceeding against Lollards, the Prelats, besides their opinions, did charge them with heinous offences: as conspiracy with multitudes of people, insurrection, rebellion, or some other treason or great crimes.

We have spoken thus much of this argument, because there be divers warring opinions concerning some of these points, that are not agreeable to the law as it standeth at this day. See the fourth part of the Institutes, cap. Chancery, in the Articles against Cardinal Woolley, Artic. 44.

^a Mir. cap. 4.
de Majestie.
Bracton, ubi sup.
Britton cap. 9.
Fleta lib. 1. ca. 35.
Register.
F.N.B. 269.
^b F. N. B. 269.
Rot. Par. 2 H. 4.
nu. 29. Sautryes case.
Bñ de heretico comburendo per regem & concilium in Parliamento.
^c 2 Mar. tit. Heresie. Br. 7.

^d 2 Mar. ubi sup.

^e Vid. Doct. & Studd. lib. 2. ca. 29.
Br. tit. Forfeiture 112.
Stan. pl. cor. 35 I.
2 Mar. Br. tit. Heresie.

^f Vid. hereafter in case of Piracy.
^g Lib. 5. Caudries case, fol. 25. b.
* 1 H. 5. fo. 6. a.
Rot. Par. 5 H. 5. nu. 11. in the case of Sir John Oldcastle.
Pasch. 9 H. 6. John Sharps case, &c.
Rot. Par. 7 H. 4. nu. 67.
11 H. 4. nu. 29.
3 H. 5. nu. 39.
1 H. 6. nu. 20.

6 A P. VI.

Of Felony by Conjuratiō, VVitchcraft, Sorcery or Inchantment.

a 33 H. 8. ca. 8.
 1 E. 6. cap. 12.
 b Inter leges
 Alveredi fo. 23.
 Edwardi & Gu-
 thruni cap. 11.
 Ethelstani, ca. 6.
 Canuti 4, 5.
 c 5 Eliz. ca. 16.
 1 Jac. cap. 12.
 A Conjuror de-
 scribed.
 A Witch descri-
 bed.
 An Inchanter
 described.

The first Act of Parliament that made any of these offences felony, was the statute of 33 H. 8. which was repealed by the statutes of 1 E. 6. ca. 12. and 1 Mariz. But b before the Conquest it was severely punished: some times by death, sometimes by exile, &c. c And after it was made felony by the statute of 5 Eliz. and again by 1 Jac. which repealeth 5 Eliz.

A Conjuror is he that by the holy and powerfull names of Almighty God in-
 vokes and conjures the Devill to consult with him, or to do some act.

A Witch is a person that hath conference with the Devill, to consult with him, or to do some act.

An Inchanter, Incantator, is he or she, qui carminibus aut cantuiculis Dæ-
 monem adjuvat. They were of ancient time called Carmina, because in those
 dayes their charmes were in verse.

Carminibus Circe socios mutavit Ulyssis.

By Charms in Rhyme (Ornell Jates !)

Circe transform'd Ulysses mates.

And again, Carmina de Cælo possunt detrudere Lunam.

By Rhymes they can pull down full soon

From lofty sky the wandring Moon.

* A Sorcerer
 described.
 Exod. cap. 22. 17.
 Deut. ca. 18. 10,
 11, 12.
 Num. ca. 23. 23.
 1 Reg. ca. 15. 23.
 d Linwood de of-
 ficio Archi-presb.
 § Igneantia.
 * Mir. cap. 1. § 5.
 & cap. 2. § 12.
 & cap. 4. § De
 Majestie.
 Brit. fo. 16. b. & 71.
 F. N. B. 269. b.
 e Int. leges Edw.
 ca. 11. fo. 55.
 & Ethelstani c. 6.
 fo. 60.
 & Canuti cap. 5.
 fo. 5.
 45 E. 3. 17. b.
 * Some think that
 this should be the
 Oath of Allegi-
 ance, *Que il ferra
 foial & loial, &c.*
 Vid. 25 E. 3. 42. b.
 corod. 131.
 See hereafter
 ca. 74. of perjury.
 Verb. That as
 well the Judge,
 &c.

* A Sorcerer, Sortilegus, quia utitur sortibus in cantationibus Dæmonis. Thou
 shalt not suffer a Witch to live. Non est augurium in Jacob, nec divinatio in
 Israel. And the Holy Ghost hath compared the great offence of Rebellion to the
 sin of Witchcraft.

And here it justly may be demanded, what punishment was against these devi-
 lish and wicked offenders before these statutes, which were made or very late
 time.

And it appeareth by our ancient books that these horrible and devilish offen-
 ders, which left the ever-living God, and sacrificed to the Devill, and thereby
 committed Idolatry, in seeking advice and aid of him, were punished by death.

* The Mirror saith, Que sorcery & devinal sont members de Heresie. And there
 he describeth Heresie, Heresie est un mauvasse & faux creance surdant de error en
 la droit foy Chrissien: and after saith, Le judgement de Heresie est d'ee arse in cen-
 dre. And herewith agreeth Britton: Sorcerers, Sorceresses, &c. & miscreants
 soient arses. And Fleta: Christiani autem Apostata, sortilegi, & hujusmodi detra-
 hant debent, & comburi. And burning then was, and yet is, the punishment for
 Hereticks. So as the consufance of these offences, if they be branches of heresie,
 (as the law was then taken) belonged (as to this day heresie doth) to Ecclesia
 & all Judges. In which case when they have given sentence, there lieth a
 Writ De hæretico comburendo.

I have seen a report of a case in an ancient Register, that in October Anno
 20 H. 6. Margery Gurdeman of Eye in the County of Suffolk, was for Witch-
 craft and consultation with the Devill, after sentence and a relapse, burnt by
 the Kings Writ De hæretico comburendo. c And this agreeth with Antiquity,
 for Witches, &c. by the lawes before the Conquest were burnt to death.

A man was taken in Southwark with a head and a face of a dead man, and
 with a book of Sorcery in his Dale, and was brought into the Kings Bench be-
 fore Sir John Knevet then Chief Justice: but seeing no indictment was against
 him, the Clerks did swear him, that from thenceforth * he should not be a Sor-
 cerer: & he was delivered out of prison, and the head of the dead man and the book
 of

of Sorcery were burnt at Tyburn at the costs of the prisoner. So as the head and his back of Sorcery had the same punishment that the Sorcerer should have had by the ancient law, if he had by his Sorcery prayed in aid of the Devil.

The Holy History hath a most remarkable place concerning the reprobation and death of King Saul. Mortuus est ergo Saul propter iniquitates suas, eo quod pravificatus sit mandatum Domini, & non custodierit illud, * sed insuper Pythoniſſam conſuluerit, nec ſperaverit in Domino; propter quod interfecit eum, & tranſtulit regnum ejus ad David filium Iſai. So Saul died for his tranſgreſſion which he committed againſt the Lord, even againſt the Word of the Lord which he kept not: And alſo for aſking counſell of one that had a Familiar Spirit, to enquire of it, and enquired not of the Lord; therefore he ſlew him, and turned the Kingdom unto David the Son of Iſai.

1 Chron. chap. 10.
v. 13, 14.
1 Reg. 15. 23.
* Nota.
1 Reg. 28. 8.

Therefore it had been a great defect in government, if ſo great an abomination had paſſed with impunity. And this is the cauſe that we have proved how and in what manner Conjuration, Witchcraft, &c. were puniſhed by death, &c. before the making of the ſaid late ſtatutes.

But now let us peruſe the Statute made in the firſt year of King James, which enely ſtandeth in force, and divideth it ſelf into five ſeverall branches.

1 Jac. cap. 12.

1. ¶ If any perſon or perſons ſhall uſe, practiſe, or exerciſe any Invocation or Conjuration of any evil and wicked Spirit.

Here the Devil by the holy and powerfull names of Almighty God is invoked (as hath been ſaid :) and this Invocation or conjuration of a wicked Spirit is felony, without any other act or thing, ſave only the apparition of the Spirit. See W. 1. cap. 1. in the Oath of the Champion, &c.

2. ¶ Or ſhall conſult, covenant with, entertain, employ, feed or reward any evil or wicked Spirit, to or for any intent or purpoſe.

By this branch, if any conſult, &c. (howſoever the wicked Spirit appeareth and cometh) theſe actions (here mentioned) with or to that wicked Spirit, to or for any intent or purpoſe, are felony without any other act or thing.

3. ¶ Or take up any dead man, woman or childe, out of his, her, or their grave, or any other place where the dead body reſteth, or the ſkin, bone, or any part of a dead perſon, to be employed or uſed in any manner of Witchcraft, Sorcery, Charm, or Inchantment.

Albeit the offender that commits theſe barbarous and inhumane dealings with the bodies of the dead, do not actually employ or uſe them in witchcraft, ſorcery, charm or inchantment: yet if he did them of purpoſe to uſe therein, it is felony, for the words of this branch be, [to be employed or uſed in any manner of witchcraft, &c.]

4. ¶ Or ſhall uſe, practice, or exerciſe any Witchcraft, Inchantment, Charm or Sorcery, whereby any perſon ſhall be killed, deſtroyed, waſted, conſumed, pined or lamed, in his or her body, or any part thereof.

By this branch no other witchcraft, inchantment, charm or ſorcery (then is before ſpecified) is felony, unleſſe by means thereof ſome perſon be killed, deſtroyed, waſted, conſumed, pined or lamed, &c. Which words have reference onely to this laſt generall claule.

5. ¶ That then every ſuch offender or offenders, their aiders, abettors and counſellors, being of any the ſaid offences duly and lawfully convicted and attainted, ſhall ſuffer pains of death as a felon or felons, and ſhall loſe the priviledge and benefit of Clergy and Sanctuary.

Albeit acceſſories before be here ſpecially named, yet acceſſories after may be of this felony, as afterwards is ſaid upon the ſtatute of 3 H. 7. for taking away of women, and upon the ſtatute of 8 H. 6. for ſtealing of Records.

The ſecond part of this Act concerneth Felony in a ſecond degree; and the branches thereof are alſo in number five.

¶ 1. If any person or persons take upon him or them, by Witchcraft, Inchantment, Charme or Sorcery, to tell or declare in what place any treasure of gold or silver should or might be found, or had in the earth or other secret places.

The mischief before this part of the Act was, That divers Impostors, Men and Women, would take upon them to tell or do these five things here specified, in great deceit of the people, and cheating and cousening them of their money or other goods. Therefore was this part of the Act made, wherein these words [take upon him or them] are very remarkable. For if they take upon them, &c. though in truth they do it not, nor can do it, yet are they in danger of this first branch.

¶ 2. Or where goods or other things lost or stolen should be found or become.

Herein they become offenders, if they take upon them as aforesaid. And note, the taking upon them to tell and declare, govern both these branches.

¶ 3. Or to the intent to provoke any person to unlawfull love.

Herein also they become offenders, by taking upon them, as is aforesaid. Here is the change of a new Verb, viz. [to provoke.] So as the sense is, If any person or persons shall take upon him or them by witchcraft, enchantment, charme or sorcery, to the intent to provoke any person to unlawfull love.

¶ 4. Or whereby any cattell or goods of any person shall be destroyed.

The Letter of this branch is this: If any person shall take upon him by witchcraft, enchantment, charm or sorcery, whereby any cattell or goods of any person should be destroyed. Although this be not sententious, yet the meaning thereof is to be taken, by supplying these words after sorcery [any thing] and not to turn [destroyed] into the Infinitive Word, as the rest be; for then it satisfieth not the meaning of the makers: for a taking upon them to destroy cattell, &c. if they be not destroyed, is not within the danger of this Act, and therefore must be supplied as is aforesaid.

¶ 5. Or to hurt or destroy any person in his or her body, although the same be not effected or done.

As in the case of cattell or goods, the destruction must be (as is aforesaid) effected and done: so in case of the person of man, woman, or childe, though the hurt be not effected or done, yet is the taking upon him, &c. to hurt or destroy any person, &c. within this branch.

¶ Being therefore lawfully convicted.

Here [convicted] is taken in a large sense for attainted, and the rather, for that after in this Act the words be [lawfully convicted and attainted, as is aforesaid.]

¶ Shall for the said offence, &c.

Here are expressed the punishments inflicted upon these Impostors, Mountebanks, and cheating Quacksalvers, viz. 1. To suffer imprisonment by the space of a whole year without bail or mainprise. 2. Once every quarter of the yeare these Mountebanks are to mount the Pillory, and to stand thereupon in some Market-Town six houres, and there to confesse his or her error and offence.

¶ And if any person being once convicted of the same offences, &c.

Here is also [convicted] taken for attainted, for he shall not be drawn in question for the second offence, to make it felony, till judgement be given against him for the first; for the Indictment of felony recites the former attainder, and the second offence must be committed after the judgement. And so it is in the case of Forgery upon the Statute of 5 Eliz. and in case of conveying of Sheep alive out of this Realm, and some others.

¶ Saving to the wife of such person as shall offend in any thing contrary to this Act, her title of dower, and also to the heir and successor

cessor of every person, his or their titles of inheritance, succession, and other rights, as though no such attainder of the Ancestor or Predecessor had been made.]

The judgement against a felon is, that he shall be hanged by the neck until he be dead; and albeit nothing else is expressed in the judgment, yet by the Common Law many things are therein implied; as the losse of his wives Dowry, the losse of his inheritance, corruption of his blood, forfeiture of his goods, &c. Now a saving will serve for any thing that is implied in the judgement; as in this case for the wives Dowry, and also for the heirs inheritance, and for all the rest of the things implied in the judgement. But a saving will not serve against the expresse judgement in case of felony, for that should be repugnant; as saving the life of the offender should be void, because it is repugnant to the expresse judgement, viz. that he shall be hanged by the neck until he be dead. Also where the saving is to the heir, it is well saved by the name of the heir, because notwithstanding the forfeiture implied in the judgement, his inheritance is saved, and by consequent the blood not corrupted, for if the blood were corrupted, he could not inherit as heir; but notwithstanding this saving, the lands are forfeited during his life.

The Statute of 5 Eliz. for preservation of the wives Dowry and the heirs inheritance, in case of forgery, is penned in this form. Provided alway, that such attainder of felony shall not in any wise extend to take away the Dowry of the wife of any such person attain: nor to the corruption of blood, or disinheriton of any heir or heirs of any such person attain.

The words of the Statute of 8 Eliz. be, Provided always that this Act shall not extend to corruption of blood, or be prejudiciall or hurtfull to any woman claiming Dowry by or from any such offender, &c. Wherein it is to be observed, that by the avoidance of corruption of blood the inheritance is impliedly saved. See the manner of the penning of the Act of 31 Eliz. concerning this matter and divers others.

And surely it is very convenient that when new felonies be made by Act of Parliament, that such savings or provisions be made both for the wives Dowry and the heirs inheritance as were had and made in these precedents.

See the 1. part of the Institutes, Sect. 747.

Vide lib. 1. in the case of Alton Woods fo.

5 El. ca. 14.

8 El. ca. 3.

31 El. ca. 4.

See the Statute of 3 Jac. ca. 4.

C A P. VII.

Of Murder.

Having now passed High treason, Petit treason, Disprision of treason, Felony by the Statute of 3 H. 7. Heresy, & Conjurat[i]on, Witchcraft, &c. We are next in order to treat of Felonies in generall: and of all felonies murder is the most hainous. Inter leges Canuti, ca. 61. fo. 118. Cædes manifestæ numerantur inter scelera nullo humano jure expiabilia. See here ca. Pardons. And of all murders, murder by poisoning is the most detestable. Therefoze first of murder. Murdrum is derived of the Saxon word Mord.

Murder is when a man of sound memory and of the age of discretion, unlawfully killeth within any County of the Realm any reasonable creature in rerum natura under the Kings peace, with malice forethought, either expressed by the party, or implied by law, so as the party wounded or hurt, &c. die of the party, or hurt, &c. within a year and a day after the same.

Hereof we will speak, together with some things concerning the accessories to the same, and leave the residue to others that have written thereof. Now let us examine the principal parts of this description.

cap. 23. & 30. Mirror cap. 1. §. ca. 2. §. 11. de Appel de homicide. Tr. 31 E. 1. Coram Rege Rot. 15. 25 E. 3. 18. 26 Ass. 27. 3 E. 3. cor. 383. 3 H. 7. ca. 1. 3 H. 7. 1. 12. 21 H. 7. 31 E. 2. Coron. 389. 1 Ma. Dier 104. b. See the first part of the Instit. 104.

4 See the 1. part of the Instit. for the word Murder, Sect. 287. and for Felony, Sect. 500, & 745.

See the 2. part of Instit. Marlb. ca. 25. Cust. de Norm. ca. 68.

b The definition of murder. Vid. devant, ca. Treason. Verb. Quant home, &c. Bract. l. 3. fol. 120, 121, 134, 135. Brit. fo. 5. 18. Fleta lib. 1.

Trin. 31 E. 3.
Coram Rege.
Rot. 54. Per
mors. canis.

Bract. l. 3. fo. 121.
Bri. fo. 14.
See lib. Inr.
Coke 25,
Lib. 4. fo. 44.
Vauxes case.
Lib. 9. fo. 81.
Agnes Gores case.
Deut. 28. 24.
Curied is he that
smitheth his neigh-
bour secretly.
4 22 H. 8. ca. 9.
Read the statute.
Dier 33 H. 8.
fol. 50. a. Sac-
combes case.
6 Anno 33 H. 8.

Britton fo. 14.

13 H. 4. 5. & 6.
Stanf. pl. cor. 65.
Mic. 25 & 26 El.
So resolved in
Dowries case.
4 13 R. 2. ca. 2.
1 H. 4. ca. 14.
Rot. Parl.
8 H. 6. nu. 38.

13 R. 2. c. 2.

Lib. 2. fo. 93.
Tr. 25 Eliz. in
Lacies case.
Fortescue ca. 32.
fo. 38.

18 H. 8. ca. 13.

2 E. 6. ca. 24.

[Killing.] As by Poyson, with a sharp or blunt, Gun, Crossbow, Crushing, Bruising, Smothering, Suffocating, Strangling, Drowning, Bur-
ning, Burying, Famine, Throwing down, Ancesting a dog or bear, &c. to bite
or hurt, &c. whereof death ensueth, laying a sick man in the cold, &c.

Poyson (*Venenum, à venis, quia à venis permeat*) is, as hath been said, the
most detestable of all, because it is most horrible, and fearfull to the nature of
man, and of all others can be least prevented, either by manhood or providence:
and that made Flea to say, Item nec per patriam se defendere debet quis de ve-
neno dato, sed tantum per corpus suum, eo quod initium facti non fuit tam pub-
licum, quod sciri poterit à patria, &c. but that is not holden for law at this
day.

This offence was so odious, that by Act of Parliament it was made High
Treason, and inflicted a more grievous and lingering death then the Common
law prescribed, viz. That the offender should be boiled to death in hot water.
Upon which statute ^b Margaret Davy a young woman was attainted of High
Treason for poysoning of her mistress, and some others were boiled to death in
Smithfield the 17 day of March in the same year. But this Act was too severe
to live long, and therefore was repealed by 1 E. 6. cap. 12. and 1 Mar. cap. 1.

All the ancient Authors, ubi supra, of old time defined murder to be, *Occulta*
hominis occisio, &c. when it was done in secret, so as the offender was not
known: but now it is taken in a larger sense.

Britton mentioneth another kind of murder (which is not holden for murder
at this day) when he saith, *Ceux ausi que fausement par loier, ou en auct*
manner ont ascuse home damne ou fait damner au mort, &c. yet this is murder
before God. And David killed Uriah with his pen, and these men with their
tongue.

[Within any County of the Realm.] If two of the Kings
subjects goe over into a forain Realm and fight there, and the one kill the
other, this murder being done out of the Realm, cannot be for want of triall
heard and determined by the Common law: but it may be heard and deter-
mined before the Constable and Marshall.

If A. give B. a mortal wound in a forain Country, B. cometh into Eng-
land and dieth: this cannot be tried by the Common law, because the stroke
was given there where no Vaine can come, but the same shall be heard and de-
termined before the Constable and Marshall: for the words of the statute of
13 R. 2. be, To the Constable it pertaineth to have consufance of Contrads
concerning deeds of arms, or of war out of the Realm, and also of things that
touch arms or war within the Realm, which cannot be determined or discussed
by the Common law.

If a man be stricken upon the high sea, and dieth of the same stroke upon
the land, this cannot be enquired of by the Common law, because no Vaine can
come from the place where the stroke was given, (though it were within the
sea pertaining to the Realm of England, and within the liegeance of the King)
because it is not within any of the Counties of the Realm. Neither can the
Admiral hear and determine this murder, because though the stroke was within
his jurisdiction, yet the death was *infra corpus comitatus*, whereof he cannot in-
quire: neither is it within the statute of 28 H. 8. because the murder was not
committed on the sea. But by the said Act of 13 R. 2. the Constable and Mar-
shall may hear and determine the same. And before the making of the statute
of 2 E. 6. If a man had been feloniously stricken, or poysoned in one County,
and after had died in another County, no sufficient Indictment could thereof
have been taken in either of the said Counties, because by the law of the Realm,
the Jurors of one County could not inquire of that which was done in another
County. It is provided by that Act that the Indictment may be taken, and the
Appeal brought in that County where the death doth happen. Before the ma-
king

king of this statute, the Appeal might have been brought in either of the said Counties, but the trial must have been out of both: but when both Counties could not join, then both Appeal and Indictment failed at the Common Law.

But here be two things to be observed: First, that in case of treason or misprision thereof, or of felony, or misprision of the same within the Realm, the party ought to be indicted within the said County where the fact is done, and it cannot be alledged in any other County then in truth where it was done. And therefore in the case above said, neither the Strake, nor poisoning, nor the death, though they be transitory, can be alledged in the Indictment or Appeal, but where in truth they were done. Secondly, the Statute of 2 E. 6. extendeth not where one is stricken or poisoned on the sea, or in any foreign Kingdome, and dieth in England, but where one is stricken or poisoned in one County, and dieth in another.

This Act extendeth, where the murder or felony is done in one County, and another shall be accessory in another County: whereof you may read at large in the Lord Sanchars case.

Richard Weston, being Sir Thomas Overburys K. & per in the Tower of London, did poison him in that part of the Tower which is within London. R. Earl of S. and F. his wife, James Franklin and Anne Turner were accessories before the fact in the County of Midd. and Sir Gervase Helwys a tenant of the Tower was accessory before the fact in London. Now upon this Statute of 2 E. 6. c. 14. divers questions were resolved. First, if the accessory be in Midd. where the Kings Bench sits, and the principal is attainted in another County, the Kings Bench may try the accessory, as it was resolved in the Lord Sanchars case, ubi supra. 2. If the Indictment of the accessory be taken in the Kings Bench, the Justices shall not by force of the Statute of 2 E. 6. write in their own names, quia plures sunt coram Rege, & non coram Justiciariis, but remove the record by the Kings writ of Certiorari. 3. Others presidents were shewn, that where accessories before the fact were in Midd. where the Kings Bench did sit, and the attainer of the principal had been in another County, the Justices of the Kings Bench have removed the attainer by writ of Certiorari before them. See the Lord Sanchars case, ubi supra, and another case where the principal was attainted in the County of Derby before Justices of Oier and Terminer, and the accessory was in Midd. where the Kings Bench sat. 4. Richard Weston being attainted as principal in the City of London, proceeding was to be had against James Franklin and Anne Turner in the Kings Bench where they were indicted. The question was, if the Kings Bench should remove the record of the attainer of the principall by Certiorari before them; and after the said Earl and his wife should be tryed by their Peeres before the Lord Steward, whether the Lord Steward might write to the Kings Bench for the record of the attainer: for the words of 2 E. 6. be, Shall write to the Custos Rotulorum, or Keepers of the Record where such principal shall hereafter be attainted or convicted. And to prevent all doubts, a speciall writ was directed according to the words of the Act, to the Commissioners of Oier and Terminer, to certifie whether the principall was attainted, convicted, or acquitted; and they made a particular certificate accordingly: so as the record of the attainer remained still with the Commissioners of Oier and Terminer in London. 5. It was resolved upon consideration had of the whole Act, that the words of the Act being, the Justices of Gaol Delivery, or of Oier and Terminer, or other there authorized, shall proceed, &c. the same extend to the high Steward to write, &c.

The Indictment of Richard Weston was, that he 9 Die Maii Anno 11 Regis Jacobi, &c. gave to Sir Thomas Overbury a poison called Roseacre in broth, which Sir Thomas Overbury, not knowing it, received: Et ut idem Ric. Weston praefatum Thomam Overbury magis celeriter interficeret & murtheret, 1 Junii Anno 11 Jac. Regis, gave unto him another poison called white Arsenick. And that Richard Weston 10 Julii, Anno 11 Jac. Regis, gave unto him

18 E. 3. 32.
9 H. 6. 63.
3 H. 7. 12.
4 H. 7. 18.
6 H. 7. 10.

Lib. 9. fol. 117;
118, &c.
Mich. 13. Jac.
Regis.
Sir Thomas Overburys case.
See hereafter
ca. 62. of Indictments more of
this case.

And that Richard Weston 10 Julii, Anno 11 Jac. Regis, gave unto him

him poyson called Mercury sublimar. in Warts, &c. ut præd. Thomam magis celeriter interficeret & murraret. And that a person unknown, by the procurement and in the presence of Richard Weston, 14 Septemb. an. 11 supradicto, gave to the said Thomas a Clyster with poyson in it, called Mercury sublimar. &c. ut præd. Thomam magis celeriter interficeret & murraret. Et prædict. Thomas Overbury de sepealibus venenis prædict. & operatione inde à prædict. sepealibus temporibus, &c. graviter languebat usque 15 diem Septemb. Anno 11 supradicto, quo quidem 15 die Septembris, &c. prædictus Thomas de sepealibus venenis prædictis obiit venenatus. And this was resolved to be a good Indictment by all the Justices of the Kings Bench, although it doth not appear in particular of which of the said poysons he died. For the substance of the Indictment was, whether he was poysoned or no by the said Richard Weston. And upon this indictment he was arraigned, pleaded not guilty, and had judgement given against him. And afterward Anne Turner, Sir Gervase Helwys Lieutenant of the Tower, and Richard Franklin the Physician, were indicted as accessories before the fact, and arraigned, and pleaded not guilty: and it fell out in evidence, that Franklin had prepared divers other poysons then were contained in the Indictment, as the powder of Diamonds, the powder of spiders, Lapis Callicus, and Cantharides, over and besides the poysons in the Indictment. And it was resolved that any of these was sufficient to prove the Indictment, for the substance of the Indictment was poysoning, which (as hath been said) is secret. See Machallis case, ubi supra. And after verdict, judgement was given against all these accessories. And after, the said Earl and the Countesse his wife were indicted as accessories before the fact, and were arraigned before the Lord Chancellor of England, and hac vice Lord High Steward of England: and upon the arraignment of the Countesse, she confessed the indictment: and when the Clark of the Crown did ask her, What she could say why judgement of death should not be given against her, she said, What she could say much against her self, but nothing for her self. And then the Lord Steward gave judgement of death against her, viz. That she should be hanged by the neck till she were dead, and adjourned his Commission, (as it was resolved he might doe by Law) untill the next day. And then the said Earl was arraigned, and pleaded not guilty, and put himself upon his Peers, who found him guilty: and thereupon the Lord Steward gave the like judgement against him. Which case we have recited the more largely for two causes. First, for that we remember not any of the Possibility of this Realm to have been attainted in former times for poysoning of any. Secondly, for that it is the first case that fell out upon the said Act of 2 E. 6. in case of trial by Peers of any that was Noble, and the proceeding herein was by great advisement. But now let us return where we left.

¶ Reasonable creature in rerum natura.] As man, woman, childe, subject born, or Alien, persons outlawed, or otherwise attainted of treason, felony, or premunire, Christian, Jew, Heathen, Turk, or other Infidell, being under the Kings peace.

a A Baster of a ship and divers Mariners, &c. were attainted of murder before Justices in Oire, for drowning of many Jews within the County of Kent.

b If a woman be quick with child, and by a Potion or otherwise killeth it in her womb, or if a man beate her, whereby the childe dieth in her body, and she is delivered of a dead childe, this is a great misprision, & no murder: but if the childe be born alive, and dieth of the Potion, battery or other cause, this is murder: for in law it is accounted a reasonable creature in rerum natura, when it is born alive. And the cBook in 1 E. 3. was never holden for law. And 3 Ass. p. 2. is but a repetition of that case. And so horrible an offence should not go unpunished. And so was the law holden in Bractons time, Si aliquis mulierem prægnantem percusserit, vel ei venenum dederit, per quod fecerit abortivum, si puerperium jam formatum fuerit, & maxime si fuerit animatum, facit homicidium. And herewith agreeth Fleta: and herein the law is grounded upon the law

a Chro. de Dunstable, Holl. 252.
Coram Justic.
Itiner. in Com.
Kanc. 18 E. 1.
See the second part of the Instit.
cap. stat. de Judicamento.

b 22 E. 3. Coron. 263.

8 E. 2. Cor. 418.
Stanp. Cor. 21. c.

c 1 E. 3. 23, 24.
3 Ass. p. 2.

d Pract. li. 3. f. 21.
Fleta, lib. ca. 23.

law of God, which saith, Quicunque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo. If a man counsell a woman to kill the childe within her wombe, when it shall be born, and after she is delivered of the childe she killeth it; the counsellor is an accessory to the murder, and yet at the time of the commandement or counsell no murder could be committed of the childe in utero matris: the reason of which case pertaineth well the other case.

Genesis, c. 6. v. 8.

Dier 3. Elia.
fol. 186.

¶ **Malice prepenfed.]** First let us see what this malice is.

Malice prepenfed is, when one compasseth to kill, wound, or beat another, and doth it sedato animo. This is said in law to be malice forethought, prepenfed, malicia pręcogitata. This malice is so obvious in law, as though it be intended against one, it shall be extended towards another. * Si quis unum percusserit, cum alium percussere vellet, in feloniam rehetur.

Dier 3. Mar. 182.
Pl. Com. 474,
475, 476.Lib. 9. fol. 81.
Agnes Gores
case.* Bract. lib. 3.
fol. 155.

Mandata recipiunt strictam interpretationem, sed illicita latam & extensivam. But herein there is a diversity between the principall and the accessory. For if A command B to kill C, and B by mistaking killeth D in stead of C, this is murder in B because he did the act, and it sprang out of the root of malice, and the law shall couple the event to the cause: but A is not accessory, because his commandement was not pursued; and his consent, which must make him accessory, cannot be drawn to it, for he never commanded the death of D. But where death ensueth upon that act which is commanded, though death it self be not commanded, there he is accessory to it, for there the commandement is the cause of death. As if A command B to beat C, and he beat him, whereof he dieth; the commander is accessory: and therefore the diversity is apparent as to the accessory, where death is pursuant, and followeth upon the act commanded, there the consent of the commander may well be drawn to it, for that the commandement is the mean of the death. But where death ensueth upon another distinct cause, there the consent of the accessory cannot be drawn to it, & sic de cæteris.

Another diversity there is, when the commandement extends expressly to the killing of another, & for the better accomplishment thereof prescribeth a mean, that is, to kill him by poison, and he killeth him with a Gun, he is accessory: for the commandement was to kill, which ensued, though the mean was not followed; & finis rei attendendus est. And the substance of the commandement, viz. [to kill] is pursued: and the same offence that was commanded is committed. But otherwise it is, if the same offence which is commanded be not committed. As if one command one to rob the Wintners man of Plate, as he is come to a Gentlemans chamber to his supper with wine, and he breaketh the Tabern in the night, and stealeth the Plate there; the commander is not accessory to this Burglary, for this is another offence then he commanded, and the consent of the accessory must be drawn to the murder or felony committed.

2. It must be malice continuing untill the mortal wound or the like be given. Albeit there had been malice between two, and after they are pacified and made friends, and after this upon a new occasion fall out, and the one killeth the other; this is Homicide, but no murder, because the former malice continued not.

If A command B to kill C, and before the Act be done A repent and countermand his commandement, and charge B not to do it; if B after killeth him, A is not accessory to it: for the malicious minde of the accessory ought to continue to do ill untill the act done.

Pl. Com. ubi sup

If two fall out upon a sudden occasion, and agree to fight in such a field, and each of them go and fetch their weapon, and go into the field, and there in fight the one killeth the other; here is no malice prepenfed, for the fetching of the weapon and going into the field is but a continuance of the sudden falling out, and the blood was never cooled. But if they appoint to fight the next day, that is malice prepenfed.

¶ **Malice implied is in three cases.]** First, in respect of the man-
ner

Lib. 9. fo. 67. b.
in Mackallies case.
1 E. 6. c. 12.

ner of the dead. As if one killeth another without any provocation on the part of him that is slain, the Law implieth malice: whereof you may read lib. 9. fol. 67. Mackallies case. Also the poisoning of any man, whereof he dieth within the year, implieth malice, and is adjudged wilfull murder of malice prepensed. One may be poisoned Four manner of ways: Gustu, by taste, that is, by eating or drinking, being infused into his meat or drink; Anhelu, by taking in of breath, as by a poisonous perfume in a Chamber or other room; Contactu, by touching; and lastly, Suppositu, as by a clyster or the like. Now for the better finding out of this horrible offence, there be divers kinds of poisons, as the powder of Diamonds, the powder of Spiders, Lapis causticus, (the chief ingredient whereof is Soap) Cantharides, Mercury sublimated, Arsenick, Roseacre, &c.

Lib. 9. fo. 68.

Mackallies case,
ubi supra.
Lib. 4. fo. 4c. b.
41. a. Youngs
case.
Mackallies case,
ubi supra.

2. In respect of the person slain. As if a Magistrate or known officer, or any other that hath lawfull warrant, and in doing or offering to do his office, or to execute his warrant, is slain, this is murder by malice implied by law, as the Sheriffe, Justice of Peace, Undersheriff, chief Constable, petit Constable, or any other minister of the King. If a man kill a watchman doing his office, it is murder: so it is if any that come in aid of the Kings officer, &c. to do his office be slain, it is murder.

Brit. cap. 11. De
prisons fo. 18. a.
See the Mirror
cap. 2. §. 11.
De Homicide.
5 H. 6. 58.
27 Aff. 41.

3. In respect of the person killing. If A assault B to rob him, and in resisting A killeth B, this is murder by malice implied, albeit he never saw or knew him before. If a prisoner by the dures of the Gaoler cometh to untimely death, this is murder (in the Gaoler, and the law implieth malice in respect of the cruelty. And this is the cause, that if any man dieth in prison, the Coroner ought to sit upon his body, to the end it may be inquired of, whether he came to his death by the dures of the Gaoler or otherwise: all which appeareth in Britton: and this sitting of the Coroner continueth till this day.

Bract. l. 3. fo. 104.

If the Sheriffe or other officer, where he ought to hang the party attainted, according to his judgement & his charge, will against the law, of his own wrong, burn or behead him, or e converso; the law in this case implieth malice in him. Neither can the King by any warrant under the Great Seal alter the execution, or otherwise then the judgement of law both direct: for it is a Maxime in law, Non alio modo puniatur quis quam secundum quod se habeat condemnatio.

See hereafter in
the title of San-
ctuary for Abju-
ration.

Pasch. 20 R. 2.
Coram Rege.
Linc. Ro. 58.
* Mich. 1 R. 2.
Coram Rege.
Rot. 1. Bedf.
See hereafter, cap.
Judgement and
Execution.
4 Pasch. 39 E. 3.
Coram Rege.
Rot. 92. Wiltes.
Simile Pasch.
28 E. 3. Coram
Rege, Rot. 37.
In case de Mortim-
er, who was put
to death Anno
1 E. 3.
Vide Rot. Brevi-
um Anno 1 E. 3.
part. 1.

And it is to be known, that in case of Treason and Felony there is an expresse judgement, and an implied judgement. Expresse, when upon appearance, &c. an expresse judgement is given against him, quod suspendatur per collum. Implied, when the offender makes default, and is outlawed, where the judgement is, Ideo outlawetur; or in case of abjurat[i]o[n]e, quia abjuravit regnum: and yet the like execution shall be in case of outlawry or Abjurat[i]o[n]e as in case of an expresse judgement: and so it was adjudged in case of a person outlawed for felony, he ought to be hanged untill he be dead, and cannot be beheaded; * and the like is in case of Abjurat[i]o[n]e. But in case of High Treason, because beheading is parcell of the judgement, the King may pardon all the residue of the execution except that: for seeing the King may pardon the whole execution, he may pardon any part, or all saving part. If a Lieutenant, or other that hath commission of Partiall authority, in time of peace hang or otherwise execute any man by colour of Partiall law, this is murder, for this is against Magna Charta, cap. 29. and is done by such power and strength as the party cannot defend himself; and here the law implieth malice. Vide pasch. 14 E. 3. in Scaccario the Abbot of Ramses case in a writ of Error in part abridged by Fitzh. tit. Scire fac. 122. for time of peace.

* Thom. Countee de Lancaster being taken in an open insurrection, was by judgement of Partiall law put to death, in Anno 14 E. 4. This was adjudged to be unlawfull, eo quod non fuit arraniatus, seu ad respon[s]ionem positus tempore pacis, eo quod Cancellaria & alie Curie Regis fuerunt tunc aperte; in quibus lex fiebat unicuique, prout fieri consuevit, quod contra chartam de libertatibus, cum dictus Thomas fuit unus Parium & Magnatum Regni, non imprisonetur, &c. Nec

Nec dictus Rex super eum ibit, nec super eum mittet, nisi per legale iudicium Patrum suorum, &c. tamen tempore pacis absque arrangemento, seu responsione, seu legali iudicio Patrum suorum, &c. adjudicatus est morti.

¶ Within a year and a day. How this year and day shall be accounted, is to be seen. If the stroke or poison, &c. be given the first day of January, the year shall end the last day of December; for though the stroke or poison, &c. were given in the afternoon of the first day of January, yet that shall be accounted a whole day, for regularly the law maketh no fraction of a day; and the day was added, that there might be a whole year at the least after the stroke or poison, &c. for if he dye after that time, it cannot be discerned, as the law presumes, whether he dyed of the stroke or poison, &c. or of a naturall death; and in case of life the rule of law ought to be certain. But seeing the year and day in the case of murder and homicide must be accounted apres le fait, after the deed, if a man be stricken or poisoned, &c. the first of January, and he dieth of that stroke or poison the first day of May, whether shall the year and day be accounted after the stroke or poison given, or after the death; and it shall be accounted after the death, for then the man was murdered, and not after the stroke or poison given, &c. both in the Indictment at the suit of the King, and in the Appeal at the suit of the party. And so it hath been often adjudged, contrary to the opinion of Justice Stanford. A murderer half a year after the murder is received and aided by another: this Accessory may be indicted or appealed within the year after he became Accessory, though it be after the year that the murder was committed, and shall be tried when the principall is attainted.

If a murder be committed in the day time in a town not inclosed, and the murderer not apprehended, the Township shall be amerced; but if inclosed, whether the murder be in the night or day, the Town shall be amerced. They that are present when any man is slain, and doe not their best endeavour to apprehend the murderer or manslaughter, shall be fined and imprisoned. What judgement a felon attainted shall have, and what he shall forfeit, See the first part of the Institutes, Sect. 747. and here cap. Judgement and Execution.

* Nota, that before the reign of H. 1. the judgement for felony was not always one, but King H. 1. ordained by Parliament, that the judgement for all manner of felonies should be, that the person attainted should be hanged by the neck till he be dead, which continueth to this day. See more for Murder in the chapter of Monomachia.

See the Statute of Gloucester.

6 E. 1. ca. 9.

3 H. 7. ca. 1.

3 E. 3. Cor. 303.

Lib. 5. fo. 1. in

Cleytons case.

Lib. 4. fo. 41, 42.

in Heydons

case.

Stanf. Pl. Cor. 63.

26 Aff. p. 52.

3 H. 7. c. 1. stat. 1.

3 E. 3. Cor. 299.

8 E. 2. Cor. 395.

Inter leges regis

Edw. cap. 6.

Ethelstani cap. 1.

Edw. cap. 6, &c.

9 H. 1.

Hoveden Anno

1108. Simon

Dun.

Rad. & Floren.

Wigorn. Hol-

lingsh. 45.

CAP.

C A P. VIII.

Of Homicide.

Homicidium ex vi termini comprehendeth Petit Treason, Murder, & that which is commonly called Man-Slaughter: for Homicidium est Hominis caedes, and homicidium est hominis occisio ab homine facto. Therefore the right division of Homicide is, That of Homicide, as Man-Slaughters, some be voluntary, and of malice forethought, as Petit Treason, and murder of another, and murder of himself. Of the two former we have spoken; and of murder of himself we shall speak hereafter. Of Man-Slaughters, some be voluntary, and not of malice forethought: of these some be felony (as shall be shewed hereafter) and some be no felony. Of which, some be in respect of giving back inevitable in defence of himself, upon an assault of revenge: and some without any giving back; as upon the assault of a thief or robber upon a man in his house or abroad. Some upon the assault of one that is under custody; as the Sheriff or Gaoler assaulted by his prisoner: Some in respect that he is an officer or minister of justice, without any assault in execution of his office, as Intendant, Justice, and Bailiff, some Homicides, that be no felony, be neither forethought nor voluntary; as Man-Slaughter by misadventure, per infortunium, &c. And some of these that be no felony, are causes of forfeiture of a mans goods, and some be not: and of these severall branches in their order. And first of murder of a mans self, which commonly is called Felo de se.

Felo de se is a man or woman, which being Compos mentis, of sound memory, and of the age of discretion, killeth himselfe, which being lawfully found by the oath of twelve men, all the goods and chattells of the party so offending are forfeited.

And let us peruse the severall branches of this description. Major est delictum seipsum occidere, quam alium.

¶ **Being compos mentis.]** a If a man lose his memory by the rage of sicknesse or infirmity, or otherwise, and kill himself while he is not compos mentis, he is not Felo de se: for as he cannot commit murder upon another, so in that case he cannot commit murder upon himself. b If one during the time that he is non compos mentis giveth himself a mortall wound, whereof he when he hath recovered his memory dieth, he is not Felo de se: because the stroke which was the cause of his death, was given when he was not compos mentis: Et actus non facit reum, nisi mens sit rea. If a man give himself a wound, intending to be Felo de se, and dieth not within the year and day after the wound, he is not Felo de se.

¶ **Of the age of discretion.]** Hereof we have spoken before treating of Murder.

¶ **Kill himself.]** c And this is often voluntary, and sometime not voluntary. If A. give B. such a stroke, as he selleth him to the ground, B. draweth his knife, and holds it up for his own defence: A. in hast meaning to fall upon B. to kill him, falleth upon the knife of B. whereby he is wounded to death: he is Felo de se; for B. did nothing but that which was lawfull in his own defence.

¶ **Lawfully found.]** d No goods be forfeited, untill it be lawfully found by the oath of twelve men that he is Felo de se: and this doth belong to the Coroner

3 E. 3. Cor. 296.
289. 312. 313. of
Britton cap. 7.

Felo de se.

Regula.

4 Rot. Claus.
1 E. 1. m. 7.
Rot. Claus.
6 E. 1. Alma
filia Roberti de
Keston. 3 E. 3.
Cor. 324.
Rot. Escheat.
Anno 47 E. 3.
nu. 17. Ricus
Algate.
18 E. 1. Cor. 412.
22 E. 3. Cor. 244.
Pl. Com. 260.

c 44 E. 3. 44.
3 E. 3. Cor. 286,
297.

d Pl. Com. 360. b.

Cozoner super visum corporis, to inquire thereof: and if it be found before the Cozoner super visum corporis, that he was felo de se, & the Executors or Administrators of the dead shall have no traverse thereunto. And this is the reason that no man can prescribe to have felons goods, because they are not forfeited, until it be found of Record that he is Felo de se.

b If a man be Felo de se, and is cast into the sea, or otherwise so secretly hidden as the Cozoner cannot have the view of the body, and by consequence cannot inquire thereof: in this case it may be inquired thereof by the Justices of peace of that County; for they have power by their commission to inquire of all felonies. But if it be found before them, the Executors or Administrators of the dead may have a traverse thereunto, but not to the indictment taken before the Cozoner super visum corporis, as before is said: and so hath it been resolved. And so in the case abovesaid may the Kings Bench enquire thereof, if the felony be committed in the County where the Kings Bench sit, and the Executors or Administrators of the dead may traverse the same.

¶ Are forfeited.] Albeit Bracton was of opinion, that if a man that was reus alicujus criminis capus sit pro eodem, utpote pro morte hominis, vel cum furto manifesto, vel quod uilegatus sit, & metu poenae imminentis mortis mortem sibi consciverit, heredem non habebit, quia sic convincitur feloniam prius factam, viz. furtum, mors hominis, vel hujusmodi, & conscientia metus in reo pro confesso habetur. Aliud erit si non sit in crimine deprehensus, &c. non debet in aliquo casu exheredatio fieri, nisi praecedat crimen propter quod periculum mortis vel membrorum sustineri debet, &c. But the law makes no such diversity: & for Felo de se, whatsoever offence he hath committed (whereof he was not in his life-time attainted) shall forfeit no lands, but his goods and chattels only. c And so saith Britton, En case ou home est felon de soy mesme, soient les chateux judges nous come chateux de felon, le heritage nequident remaing as heires. For no man can forfeit his land without an attainder by course of law.

A Willain giveth himself a mortal wound, the Lord seisseth his goods, the Willain after dieth of the wound within the year and the day; the goods are forfeit.

And herein is there a diversity between Chattels personels in action and in possession: for if a debt be owing to two, unless it be in case of two joint Debtors, and the one is Felo de se, he doth forfeit the whole; but otherwise it is of goods in possession, for there he forfeiteth but his part. *Flow. Cou. in le Court on q^r p^r plead: 250: a*

A Lease is made for years to the husband and wife, the husband doth wench himself; the Lease is forfeited, as you may read at large in Plowdens Commentaries.

Now let us pursue the branches into which bloody Homicide did spend and empty it self.

Some man slaughters be voluntary, and not of malice forethought, upon some sudden falling out. Delinquens per iram provocatus puniri debet mitius. And this for distinction sake is called manslaughter. There is no difference between murder & manslaughter, but that the one is upon malice forethought, & the other upon a sudden occasion, and therefore is called Chance-medly. As if two meet together and striving for the wall the one kill the other, this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the fields and fought, and the one had killed the other: this (as hath been said) had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the heat of the blood kindled by ire was never cooled till the blow was given: & sic de similibus.

Manslaughter is felony, and hereof there may be accessories after the fact done; but of murder there may be accessories as well before as after the fact.

Some be voluntary, and yet being done upon an inevitable cause, are no felony. As if A be assaulted by B, and they fight together, and before any mortal blow given A giveth back until he cometh unto a hedge, wall, or other strait,

a Stanf. pl. cor. 183. d.

b Hil. 37. Eliz. in the Kings Bench by the whole Court, in the case of one Laughton of Cheshire. See 8 E. 2. cor. 412. 3 E. 3. cor. 312. hle. Stanf. pl. cor. 184.

c 8 E. 2. cor. 426. 44 E. 3. 44. 22 E. 3. cor. 259. 3 E. 3. cor. 301. 3 E. 3. cor. 362. 5 Mar. Diet 160. 9 Eliz. Diet 262. Bract. lib. 3. f. 150. Fleta lib. 2. c. 34. d Pl. com. 261. a. & b. per totus les Justices. e Britton, cap. 7. Custu de Norm. cap. 21.

f Pl. com. 260. b.

g 8 E. 4. 4. Pl. com. 259. b. *et al cond*

h Pl. com. 260. Diet 2 Mar. 108.

i Lib. 4. fol. 44. Bibiths case. k 15 E. 3. Cor. 116. 15 Aff. p. 7. 43 Aff. 31. See the stat. of Gloc. cap. 9. 3 E. 3. cor. 184. 286. & 297. 305. & 361.

See hereafter c. 101. of Judgement and execution. Verb. Of death of a man se defendendo.

443 Aff. 31. Rot.
Parl.
3 R. 2. nu. 18.
John Imperials
case.
b 21 E. 3. 17.
Gloc. cap. 9.
4 H. 7. 2.
c Lib. 4. fo. 44.
Bibiths case.

Bracon.
d Lib. 5. fo. 91.
Semayns case.
26 Aff. p. 23. 32.
29 Aff. p. 23.
3 E. 3. cor. 305,
& 330.
22 E. 3. cor. 261.
21 H. 7. 39.
e 24 H. 1. cap. 5.
f 22 Aff. p. 55.
g 3 E. 3. cor. 299.
22 E. 3. cor. 261.
M. 22 E. 3. coram
rege Rot. 181.
Eborum,
Rot. libert. Anno
1 & 2 E. 1. m. 2.

h Palch. 16 E. 3.
Coram rege
Rot. 131. Norff.

i 11 H. 7. 22.
Vid. hereafter,
cap. Against ri-
ding and going
armed.
k Mirror cap. 1.
§ 13. Des adven-
tures.
l Braet. lib. 3.
fol. 136. b.
See the stat. of
Gloc. c. 9. Marl.
cap. 25.
Braet. lib. 3. 120.
Brit. c. 7. fo. 15.
Fleta lib. 1. ca. 30.
Mir. ca. 1. §. 9.
m Braet. lib. 3.
120. b. Sed erit
distinguedum
utrum quis dede-
rit operam rei
licitæ vel illicitæ,
&c.
n 3 E. 3. cor. 354.
2 H. 4. 18.
11 H. 7. 23. a.

beyond which he cannot pass, and then in his own defence and for safeguard of his own life killeth the other: this is voluntary, and yet no felony, and the Jury that find it was done se defendendo, ought to finde the special matter. ^a And yet such a precious regard the law hath of the life of man, though the cause was inevitable, b that at the common law he should have suffered death: and though the statute of Glocester save his life, yet he shall forfeit all his goods and chattels. ^c Hereof there can be no accessories, either before or after the fact, because it is not done felleo animo, but upon inevitable necessity se defendendo. If A assault B so fiercely and violently, and in such a place, and in such manner, as if B should give back, he should be in danger of his life, he may in this case defend himself: & if in that defence he killeth A, it is se defendendo, because it is not done felleo animo: for the rule is, when he doth it in his own defence, upon any inevitable cause, Quod quis ob tutelam corporis sui fecerit, jure id fecisse videtur.

^e Some without any giving back to a wall, &c. or other inevitable cause. d As if a thief offer to rob or murder B either abroad or in his house, and thereupon assault him, and B defend himself without any giving back, and in his defence killeth the thief, this is no felony: for a man shall never give way to a thief, &c. neither shall he forfeit any thing. ^e And so it is declared by the statute of 24 H. 8. Likewise f if a prisoner assault the Gaoler, the Gaoler is not by law inforced to give back: but if in defence of himself he kill the prisoner, this is no felony.

g So if any Officer or Minister of justice, that hath lawfull warrant, and the party assault the Officer or Minister of Justice, he is not bound by law to give back, but to carry him away: and if in execution of his office he cannot otherwise avoid it, but in striving kill him, it is no felony. And in that case the Officer or Minister of justice shall forfeit nothing, but the party so assaulting or offering to fly away, and is killed, shall forfeit his goods and chattels.

h Vicecomes seu balius Domini Regis, qui interficit duos latrones non permittentes se iusticiari in sui defensionem, & non ex feloniam, seu malicia, acquieratur.

i If at a Just or Turnement, or at the play with Sword and Buckler by the Kings commandement, one doth kill another, this is no felony. k In the reigne of King H. 2. it was enacted, that if in such case one was slain, it should be no felony, for that in friendly manner they contended to try their strength, and to be able to doe the King service in that kinde, as occasion should be offered.

q There is an Homicide, that is neither forethought nor voluntary. l As if a man kill another per infortunium, seu casu, that is Homicide by misadventure. De amputatore arborum, qui cum ramum projiceret, inscius occidit transeuntem: aut cum quis pilam percusserit, &c. ex cuius ictu occisus est: tales de homicidio non tenentur. Homicide by misadventure, is when a man doth an act that is not unlawfull, which without any evil intent tendeth to a mans death.

¶ Unlawfull. m If the act be unlawfull, it is murder. As if A meaning to steal a Deer in the Park of B, shooteth at the Deer, and by the glance of the arrow killeth a boy that is hiden in a bush: this is murder, for that the act was unlawfull, although A had no intent to hurt the boy, nor knew not of him. But if B the owner of the Park had shot at his own Deer, and without any ill intent had killed the Boy by the glance of his arrow, this had been Homicide by misadventure, and no felony.

n So if one shoot at any wild fowle upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is per infortunium: for it was not unlawfull to shoot at the wilde fowle: but if he had shot at a Cock or Hen, or any tame fowle of another mans, and the arrow by mischance had killed a man, this had been murder, for the act was unlawfull.

¶ Without

¶ Without any evil intent.] If a man knowing that many people come in the street from a Sermon, throw a stone over a wall, intending only to fear them, or to give them a light hurt, and thereupon one is killed, this is murder; for he had an ill intent, though that intent extended not to death, and though he knew not the party slain. For the killing of any by misadventure, or by chance, albeit it be not felony, Quia voluntas in delictis, non exitus spectatur, yet he shall forfeit therefore all his goods and chattels, to the intent that men should be wary so to direct their actions, as they tend not to the effusion of mans blood.

Marlb. ca. 25.

Nec veniam effuso sanguine casus habet.

Pota, Homicide is called Chancemedley or Chancemelle, for that it is done by chance (without premeditation) upon a sudden hazard, shuffling or contenti- on: for meddle or melle (as some say) is an ancient French word, and signifieth hazard or contention. But I take it that the French word is melle, which signifieth shuffling or contending, and by corruption we changing the S to D, do call it medle, the S being not pronounced, whereof we have made medlerum. So as killing of a man by chance-medle is killing of a man upon a sudden hazard or contention by chance. For the word [medle or melle] whereof we have made a Latin word medlerum or mellerum, see Glanvill, lib. 1. cap. 2. Cognoscere de medletis, de verberibus, de plagis, that is, of haz- ling or hazling, of battery, of wounding: the first in words, the other two in strokes, &c. in ancient time expressed by these two Saxon words, viz. Flit, a Flitan, to hazard; & Fihc, which we retain still to fight when it proceeds to blows. Unde Flitwit, Flichwite, Fightwite, &c.

De Medletis.

And thus much of Homicide committed by man. See in the next Chapter of Deodands, of another kind of killing of a man.

C A P. IX.

Of Deodands.

Deodands, when any moveable thing inanimate, or beast animate, doe move to, or cause the untimely death of any reasonable creature by mischance in any County of the Realm (and not upon the sea, or upon any salt water) without the will, offence, or fault of himself, or of any person. They being so found by lawfull inquisition of twelve men, being precium sanguinis, the price of blood, are forfeited to God, that is, to the King, Gods Lieutenant on earth, to be distributed in works of charity for the appeasing of Gods wrath.

And it is to be observed, that there is a diversity as concerning the Deodand, when the party slain is within the age of discretion, viz. of 14. years, and when he is above the age of discretion. For when he is slain by fall from a cart, horse, mill, &c. and is within the age of discretion, there is no Deodand, as it is adjudg- ed in 8 E. 2. tit. Coron. 389. But otherwise it is if an ore, horse, bull, or the like do kill any within the age of discretion, there the same are Deodands.

And this law concerning Deodands is grounded upon the law of God, Exodus 2. vers. 28. Si bos cornu percusserit virum aut mulierem, & mortui fuerint, lapidibus obruetur. See Justice Stanford lib. 1. cap. 12. which need not here to be recited. If A killeth a man with the sword of B, the sword shall be forfeit to

48 E. 2. Cor. 403.
8 E. 2. ibid. 189.
A mill wheel.
Fleta lib. 1. ca. 25.
quicquid mobile
sit in molendino.
Mirror ca. 1. §. 13.
12 R. 2. Cor. 20.
a masse of earth
in a mine.
b Bract. lib. 3. fo.
120. b. a bove,
cane, &c.
c Bracton lib. 3.
fo. 122. a.
Britton fo. 6. 15.
Mirror cap. 1.
§. 3.
Fleta li. 1. ca. 1. 25.
45 E. 3. 2. b.
Vide 4. E. 1. Stat.
officium coron.
6 E. 6. Dier 77. b.
5. fo. 110. Foxleys
case accord. And this is the reason they cannot be claimed by prescription. 45 E. 3. ubi supra. Fleta ubi sup. e 8 E. 2.

65. a. Quis movens ad mortem sunt Deo dands: 2 Mar. ibid. 107. b. Kelway 21 H. 7. fo. 8. d Lib. 5. fo. 110. Foxleys case accord. And this is the reason they cannot be claimed by prescription. 45 E. 3. ubi supra. Fleta ubi sup. e 8 E. 2. Cor. 389. f Exod. 2. 28.

f the

Doct. & Stud. *
lib. 2. 156. b.
Br. Forfeit. 112.

All our ancient
Authors ubi
supra.

Rot. Parl. 51 E. 3.
nu. 73.

* The arm of the
sea is included
herein.

the King as a Deodand, because mover ad mortem, and for default of safe keeping of the same by the owner.

But now that we have cited and referred you to our books of law already known and published, let us cast our eye upon some Records of Parliament concerning Deodands of or out of ships or other vessels upon Rivers or waters, fresh or salt, the law being clear, that in aqua dulci there may be Deodands, but in the sea, or in aqua salis, being any arm of the sea, though it be in the body of the County, there can be no Deodand of the ship, or any part thereof, though any be drowned out of it; because, though the arm of the sea be within the body of the County, the ship or other vessel is subject to such dangers upon the raging waves in respect of the wind and tempest. And this diversity doth notably appear in the Parliament Roll. Amongst the petitions in Parliament it is desired, that if it happen any man or boy to be drowned by a fall out of any ship, boat, or vessel, they shall be no Deodands. Whereunto the King upon great advice and conference with his Judges and Council learned (as alwaies the King doth to petitions in Parliament) made answer, The ship, boat or vessel being upon the sea shall be adjudged no Deodand, but being upon a fresh river, it is a Deodand, but the King will shew favour.

See the like petitions in other Rolls of Parliament, Anno 1 R. 2. nu. 106. 4 R. 2. nu. 33. 1 H. 5. nu. 35, &c. but never obtained more then the Common law gave in these cases.

C A P. X.

Of Buggery or Sodomy.

IF any person shall commit buggery with mankind or beast, by authority of Parliament this offence is adjudged felony without benefit of Clergy. But it is to be known, (that I may observe it once for all) that the Statute of 25 H. 8. was repealed by the Statute of 1 Mar. whereby all offences made felony or Premunire by an Act of Parliament made since 1 H. 8. were generally repealed: but 25 H. 8. is revived by 5 Eliz.

Buggery is a detestable and abominable sin, amongst Christians not to be named, committed by carnal knowledge against the ordinance of the Creator and order of nature, by mankind with mankind, or with brute beast, or by two mankind with brute beast.

Bugeria is an Italian word, and signifies so much as is before described. Paderastes or Paderastes is a Greek word, Amator puerorum, which is but a Species of Buggery: and it was complained of in Parliament, that the Lombards had brought into the Realm the shamefull sin of Sodomy that is not to be named, as there it is said. Our ancient authors do conclude, that it deserveth death, ultimum supplicium, though they differ in the manner of punishment. Britton saith, that Sodomites and Discreants shal be burnt: and so were the Sodomites by Almighty God. Fleta saith, Pecorantes & Sodomitz in terra vivi confodiantur: and therewith agreeth the Mirror, pur le grand abomination; and in another place he saith, Sodomie est crime de Majestie vers le Roy celestre. But (to say it once for all) the judgement in all cases of felony is, that the person attainted be hanged by the neck until he or she be dead. But in ancient times in that case, the man was hanged & the woman was drowned, wherof we have seen examples in the reign of R. 1. And this is the meaning of ancient franchises granted de Furca & Fossa, of the Gallows and the Pit, for the hanging upon the one and drowning in the other: but Fossa is taken away, and Furca remains.

Gum

25 H. 8. ca. 6.
5 Eliz. ca. 17.
1 Mar. ubi sup.

Horrendum illud
peccatum.
5 El. ca. 17.

Rot. Parl. 50 E. 3.
nu. 58.

Britton ca. 9.
Gen. 19. 9.
Rom. ca. 1. 17.
F. N. B. 269. 2.
Fleta li. 1. ca. 35.
Mirror ca. 4. §. de
Majesty, ca. 1.
§. 15. & cap. 2.
Sec. 11.

Cum masculo non commiscearis coitu formineo, quia abominatio est. Cum omni pecore non coibis, nec maculaberis cum eo. Mulier non succumbet iumento; nec miscebitur ei, quia scelus est, &c. Levit. 18. 22, 23. 1 Tim. 1. 10.

The Act of 25 H. 8. hath adjudged it felony, and therefore the judgement for felony doth now belong to this offence, viz. to be hanged by the neck till he be dead. He that readeth the Preamble of this Act, shall finde how necessary the reading of our ancient Authoꝝ is. The statute doth take away the benefit of Clergy from the Delinquent. But now let us peruse the words of the said description of Buggery.

[Detestable and abominable.] These just attributes are found in the Act of 25 H. 8.

[Amongst Christians not to be named.] These words are in the usual Indictment of this offence, and are in effect in the Parliament Roll of 50 E. 1. Ubi Supra, nu. 58.

[By Carnall knowledge, &c.] The words of the Indictment be, Contra ordinationem Creatoris & naturæ ordinem, rem habuit veneream, dictumque puerum carnaliter cognovit, &c. So as there must be penetratio, that is, res in re, either with mankind or with beast, but the least penetration maketh it carnall knowledge. * See the indictment of Stafford, which was drawn by great advice, for committing Buggery with a Boy; for which he was attainted and hanged.

The Sodomites came to this abomination by four means, viz. by pride, excess of diet, idleness, and contempt of the poꝝ. Orisus nihil cogitat, nisi de ventre & venere. Both the agent and consentient are felons: and this is consentiant to the law of God, c Qui dormierit cum masculo coitu formineo, uterque operatus est nefas, & morte moriatur. And this accordeth with the ancient Rule of law, Agentes & consentientes pari poena plectuntur.

Emissio seminis maketh it not Buggery, but is an evidence in case of Buggery of penetration: and so in Rape the words be also carnaliter cognovit, and therefore there must be penetration; and emissio seminis without penetration maketh no Rape. Vide in the Chapter of Rape. If the party buggered be within the age of discretion, it is no felony in him, but in the agent only. When any offence is felony either by the Common law, or by statute, all Accessories both before and after are incidently included. a So if any be present, abetting and aiding any to do the act, though the offence be personall, and to be done by one only, as to commit Rape, not only he that doth the act is a principall, c but also they that be present, abetting and aiding the misdoer, are principals also; which is a proof of the other case of Sodomy.

[Or by woman.] This is within the Purvien of this Act of 25 H. 8. For the words be, if any person, &c. which extend as well to a woman as to a man, and therefore if he commit Buggery with a beast, he is a person that commits Buggery with a beast, to which end this word [person] was used. And the rather, for that somewhat before the making of this Act, a great Lady had committed Buggery with a Babon, and conceived by it, &c.

There be four sins in holy Scripture called Clamantia peccata, crying sins, whereof this detestable sin is one, expressed in this Distichon,

Sunt vox clamorum, vox sanguinis, & Sodomorum,
Vox oppressorum, merces detenta laborum.

* This is grounded upon the Word of God, viz. Gen. 19. 4, 5. Judges 19. 22. Ut cognoscamus eos.
a Coke lib. Intr. 352. Mich. 3. Ja. Coram rege. b Ezek. 16. 49. Gen. 18. 29. Deut. 29. 23. Esay 13. 19. Jer. 23. 14. 49. 18. 50. 4. Luke 17. 28, 29. 2 Pet. 2. 6. Jud. vers. 7. Rom. 1. 26, 27. Sapient. 10. 6, 7. c Levit. 20. 13. 1 Cor. 6. v. 10. d 3 & 4 P. & Mar. Justice Dalisons Reports. Stanf. Pl. Cor. Pl. com. 97. e 11 H. 4. 13. See the 2 part of the Institutes, in the exposition upon the statute of W. 1. ca. 13. and W. 2. cap. 34.

CAP. XI.

Of Rape.

Deut. 22. 25.
Inter leges Alve-
redi cap. 25.
Canuti 49. 50.
See W. 2. c. 34.
W. 1. ca. 13.
Rot. Parl. 8 E. 2.
& Rot. Claus.
8 E. 2. m. 3. Quia
in casu quando
aliquis, &c.
6 R. 2. ca. 6.
18 Eliz. cap. 6.
Lib. 11. fo. 39.
Alexander Poul-
ters case.
See the 1. part of
the Institutes,
Sect. 190.
Mich. 19 E. 3.
Coram rege,
Rot. 159. London.
quod ipsam de
puellagio suo
felonice & tota-
liter dehoravit.
7 H. 6. 2.
23 E. 4. 22.
6 H. 7. 4. b.
a Di. 14 El. f. 304.
b 18 El. ca. 6.
c See before in
the next prece-
ding chapter of
Buggery.
d Rot. Parl.
15 H. 6. nu. 14.
e In the same Roll
nu. 15.
f Rot. Parl.
18 H. 6. nu. 28.
g Rot. Parl.
31 H. 6. nu. 72.
h 31 H. 6. ca. 9.

Gen. 34.

2 Sam. 13. 14. 19.

RApe is felony by the Common law, declared by Parliament, for the un-
lawfull and carnall knowledge and abuse of any woman above the age
of ten years against her will, or of a woman-child under the age of ten
years with her will, or against her will, and the offender shall not have the be-
nefit of Clergy.

What offence this was at the Common law, and what Acts of Parliament
have been enacted concerning the same, See in the Second part of the Institutes,
in the exposition upon the statute of W. 1. c. 13. and W. 2. ca. 34. and the First
part of the Institutes, Sect. 190. 7 H. 6. 2. 22 E. 4. 22. 6 H. 7. 4. b.

a The doubt that was made in 14 Eliz. at what age a woman-child might be
ravished, was the cause of the making of the b Act of 18 Eliz. ca. 1. for plain de-
claration of the law. [That if any person should unlawfully know and abuse any
woman-child under the age of ten years, every such unlawful and carnal know-
ledge should be felony, and the offender therein being duly convicted, shall suffer
as a felon without allowance of Clergy.]

c Although there be emissio seminis, yet if there be no penetration, that is res
in re, it is no Rape; for the words of the indictment be, carnaliter cogitavit, &c.

d In the Parliament Rolls we read what defilement hath been lad of this
hainous offence. At the petition of Isabell late the wife of John Boclei of Beatt-
lie in the County of Lancaster knight, which Isabell one William Pull of
Chirall in the County of Chester Gent. did shamefully ravish; It is enacted
by Authority of Parliament, that if William Pull do not yield himself after pro-
clamation made against him, that he shall be taken as a Traitor attainted.

e The same Isabell by another petition sheweth, how the said William by duces
and menace of imprisonment enforced her to marry him, and by colour there-
of ravished her, for the which she prayeth her Appeal, which to her is granted.

f Margaret late the wife of Sir Thomas Malesant knight, made the like com-
plaint against one Lewys Leyson, alias Geheye, a Welchman. Against whom the
like order is taken as was for the said Isabell: onely where the Rape was com-
mitted in Wales, it is enacted that the same shall be tryed in Somersetshire.

g Upon complaint of Henry Beaumont son and heir of Sir Henry Beaumont
knight, and Charles Vowell Esquire, &c. against one Edward Lancaster of Ship-
ton in Craven Esquire, for taking away Dame Joan Beaumont the late wife of
the said Sir Henry, being lawfully married to the said Charles, and for that the
said Edward married the said Dame Joan against her will and ravished her;
Against Edward Lancaster and others remedy is given by appeal, and further
h upon occasions happening thereupon, the statute of 31 H. 6. was made, which
giveth remedy to a woman enforced to be bound by statute or obligation, as by
the Act it appeareth.

It is read in Hozy, that chaste Lucretia being ravished, she was found in ex-
tream heaviness, and it was demanded of her, Salva? she answered, Quomodo
mulier salva esse potest lapsa pudicitia? And yet thereof it is truly said, duo fu-
erunt, & unus commisit adulterium.

In the holy History you shall read, Dinam cum vidisset Sichem filius Hemor Hevzi,
princeps terræ illius, adamavit & rapuit, &c. Observe well what followed there-
upon. Likewise Ammon prævalens viribus suis oppressit Thamar sororem suam,
& cubavit cum ea, &c. quæ aspergens cinerem capiti suo, scissâ talari tunicâ, imposi-
tis manibus super caput suum ibat ingrediens & clamans, &c. And observe also the
end of the offender.

CAP.

CAP. XII.

Felony for carrying away a woman against her will, &c.

VV^e have thought good next after Buggery and Rape, to speak of the stealing of women, because the * Apostle doth rank after the Sodomite, him that is Plagiarus, so called, because lege Flavia plagis damnaretur. And we will begin with the statute of 3 H. 7. cap. 2.

Exod. 21. 16.
Deut. 24. 7.
* 1 Tim. 1. 10.

Where women, as well maidens, as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their Ancestors, for the lucre of such substances, been oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to other by their assent, or deſoyled, to the great displeasure of God, and contrary to the Kings Lawes, and disparagement of the ſaid women, and utter heavineſſe and diſcomfort of their friends, and to the evill enſample of all other: It is therefore ordained, eſtabliſhed and enacted by our Sovereign Lord the King, by the advice of the Lords Spirituall and Temporall, and the Commons in the ſaid Parliament aſſembled, and by authority of the ſame, That what perſon or perſons from henceforth that taketh any woman ſo againſt her will unlawfully, that is to ſay, maid, widow or wiſe, that ſuch taking, procuring, and abetting to the ſame, and alſo receiving wittingly the ſame woman ſo taken againſt her will, and knowing the ſame, be felony. And that ſuch miſdoers, takers, and procurators to the ſame, and receitors, knowing the ſaid offence in forme aforeſaid, be henceforth reputed and adjudged as principall felons. Provided alway that this Act extend not to any perſon taking any woman, only claiming her as his Ward or bondwoman.

3 H. 7. ca. 2.
39 El. ca. 9.

This Act on the offenders part doth extend to all degrees, and to all perſons, but extendeth not to all women: For on the womans part Four things are neceſſarily required to make the offence felony. Firſt, that the maid, wife or widow have lands or tenements, or moveable goods, or be an heir apparent. Secondly, that ſhe be taken away againſt her will. Thirdly, that ſhe be married to the miſdoer, or to ſome other by his conſent, or be deſoyled (that is, carnally known.) For if theſe conſpire not, the miſdoer is no felon within this ſtatute, but otherwiſe to be puniſhed. And ſo it was reſolved, 3 & 4 Ph. & Mar. and after reſolved by all the Judges of England upon adviſed conſideration of this Act of 3 H. 7. and upon conſultation and conference between them, as the Lord Chief Juſtice hath reported under his own hand, which I have ſeen, but the report thereof is omitted in the print: and the Indictments grounded upon this ſtatute are according to this reſolution. Fourthly, that ſhe be not heard or bondwoman to the perſon that taketh her, or cauſeth her to be taken only as his ward or bondwoman.

3 & 4 Ph. & Mar.
Juſtice Daltons
report.
Mich. 26 Eliz.
Dier Manuſcript.
And ſo reſolved
by Parliament
in Anno 39 El.
cap. 9.

By this Act, not only the takers, but the procurers, abettors of the felony, & receivers of the ſaid woman wittingly, knowing the ſame, be all adjudged as principall felons: the like whereof we find not in any other ſtatute, that we remember. But by a conſtruction of the Common law, they that receive the miſ-

Nota, quia raro.

doers, and not the woman, are accessories; for this Act maketh the receivers of the woman, &c. principals.

For the odiousness of this offence, the benefit of Clergy is taken away from all the offenders against the said Act. Vid. Kelway, & Stanford.

See a good and profitable statute made for such as take away Maidens or women children, &c. within the age of sixteen yeares (though it be not against their will) without consent of parents, &c. and a penalty imposed for bestowing or contracting matrimony with such maids or women children and further, the forfeiture which such maid or woman child undergoes, which consent to such contract, &c. But because we are now to speak of felonies, whereunto that Act extends not, we refer the Reader to the statute it selfe. Only we will adde a case which we finde in the Parliament Roll.

The Lady Nevill of Ellers complained in Parliament, that John Brewle and others brake her house at London, and violently took thereout Margery the Daughter of John Nierford her Son (by her first Husband) and carried the said Margery away to the house of Sir Robert Howard Knight; and they kept away the said Margery, to the end she should not pursue in Court Christian, for the annullation of a contract of matrimony, against the said John Brewle. This was holden to great an offence, as the said Sir Robert was committed by the Lords to the Tower of London, and he after found surety, and promised to doe his utmost to bring forth the said Margery by a day prefixed, or else to yield himself prisoner to the Tower againe; but it seems the maid was restored to her mother againe, &c. for I finde no further prosecution of that cause. See here after, cap. 45. in fine 43 Eliz. cap. 13.

CAP. XIII.

Of Felony for cutting out of Tongues, and putting out of Eyes, &c.

IF any man do cut out the Tongue or put out the Eyes of any of the Kings Lieges, of malice prepensed, it is felony. The mischief before this statute was, that when one had been beaten, maimed, maimed or robbed, &c. the misdoers, to the end that the party grieved might not be able to accuse them, did cut out their tongues, or put out their eyes, pretending the same to be no felony: and therefore it is ordained and established to be felony by this Act.

Here it is to be observed, that where it doth appear by the preamble of this law, that this offence had been before this Act daily done; this law did so terrifie offenders, as we remember not that we have read in any book or Record, any to be indicted, &c. upon this law, above one at the most. And of all statutes these are to be preferred which prevent offences before they be done, before those which punish them after they be done. And therefore in the making of this law there was *Salutaris severitas, & beata securitas*.

[Malice prepensed.] That is, voluntary and of set purpose, though it be done upon a sudden occasion: for if it be voluntary, the law implieth malice.

We read in Bracton, that the cutting off of a mans privy members was felony by the common law: for he saith, *Quid dicitur si quis alterius virilia absciderit, & illum libidinis causa vel convicii castraverit? tenetur sive hoc volens fecerit vel invitus, & sequitur poena aliquando capitalis, aliquando perpetuum exilium cum omni bonorum ademptione*. And agreeable thereunto I finde a Record in Bractons time to this effect, *Henricus Hall & A. uxor ejus capti & detenti sunt in prisona de Evilchester, eo quod reſtati fuerunt quod ipsi abſciderunt virilia*

39 Eliz. cap. 2.
Kelway 31. b.
Stanf. Pl. Cor.
37. b.
4 & 5 Ph. & Mar.
cap. 8.
Hil. 34 Eliz. lib. 3.
fo. 37. Ratcliffs
case.

Rot. Parl. 2 R. 2.
nu. 34.

1 H. 4. cap. 5.

Bracton, lib. 3.
fo. 144. b.

Rot. Claus. Anno
13 H. 3. m. 9.

virilia Johannis Monachi, quem idem Henricus deprehendit cum prædicta A. uxore ejus, &c. Fleta saith, Si quis castratus fuerit, talis pro mahematio poterit adjudicari. And therewith agreeth old Justice Sennall in the Mirror; and so is the law holden at this day. And in the Appeal and Indictment of Mayhem it is said felonice mayhemavit; whereof we shall speak more hereafter in his proper place. Cutting off of ears is no felony, as it appeareth by the Statute of 37 H. 8. Vid. Stanf. Pl. Cor. 27. a. The offender shall have the benefit of his Clergy.

Fleta li. 1. ca. 38.
M^{ay} ca. 1. §. 5.
De homicidio.
See hereafter
ca. 53. of Mayhem
37 H. 8. cap. 6.
Mir. cap. 4. de
Artic. de Eire.

C A P. XIV.

Of Burglary.

A Burglar (or the person that committeth Burglary) is by the Common law a felon, that in the night breaketh and entreth into a mansion-house of another, of intent to kill some reasonable creature, or to commit some other felony within the same, whether his felonious intent be executed or not. We call it in Latine Burglaria: and in Statuto de officio Coronat. the offenders are called Raptores domorum.

This word ^b Burglar is derived of these two words, viz. Burgh, signifying an house, and Laron, signifying a thief, as it were an house-thief. The Saxons called it hurbæc, inter scelera inexpressibilia. And aptly was it derived from Laro: for,

d Ut jugulent homines, surgunt de nocte latrones.

^e Britton calleth him a Burgefflor. Then let us peruse the branches of this description.

^a Inter Leg. Edm.
cap. 6. fo. 76.
²² Deut. 2.

^b Lib. 4. fo. 39.
Brooks case.
^c Inter leges
Canuti, fo. 118.
cap. 61. Lamb.
^d Horat. lib. 1.
Epist.
^e Britton fo. 17.

¶ In the night.] The word in the Indictment or Appeal, is no-
ctanter, id est, noctu. The naturall day is divided in lucem, light, which is dies
solaris, and in tenebras, which is night. ^g And therefore as long as the day-light
continues, whereby a mans countenance may be discerned, it is called day: and
when darkness comes and day-light is past, so as by the light of day you cannot
discern the countenance of a man, then it is called night. ^h Posui tenebras, &
facta est nox, in qua pertransiunt bestie silvæ: sol oritur & congregatur sunt; exit
homo ad opus & operationem suam, & redit vespere. This doth aggravate the
offence, sith the night is the time wherein man is to rest, and wherein Beasts
run about seeking their prey.

^f 4 E. 6. Br. Cor.
185.
Stanf. Pl. Cor.
fo. 30.
^g 3 E. 3. cor. 293.

^h Psal. 104.
Lib. 7. fo. 6. b.
Milborns case.

In ancient Records Crepusculum was signified, when it was said, Inter Ca-
nem & Lupum: for when the night begins, the Dog sleeps, and the Wolf seeks
his prey. For so we find the entry oftentimes in the reign of E. 1. as taking
one example for many, ⁱ Margeria filia Nicolai de Okele appellat Johannem
Chose pro Raptu, & pace regis fracta, die Martis, &c. inter Canem & Lupum, id
est, inter diem & noctem, vel in crepusculo, anglice Twilight.

ⁱ Tr. 7 E. 1. co-
ram rege, Rot. 12.
Gloc.

^k In placito de domo combusta malitiose, hora vespertina, scilicet inter Canem
& Lupum, venerunt malefactores A, B, &c.

^k Placita coronæ
apud Novum ca-
strum anno 24.
E. 1. Rot. 6. in
dorfo.

^l Ignitegium, à regendo ignem, i. Cover le feu, hora octava post meridiem.

^l Hil. 3 R. 2. co-
ram rege, Rot. 8.
London.

^m Bracton saith, Si quis furem nocturnum occiderit, ita demum impune foret, si
parcere ei sine periculo suo non potuit; si autem potuit, aliter erit, in manibus
enim Regis sunt vita & mors hominum, sicut coram Rege apud Windesore de quo-
dam homine de Cotham, coram Guilielmo de Ralegh tunc Justiciario, cui domi-
nus Rex in tali casu perdonavit mortem. Agreeable herewith was the law of the
twelve tables, Si noctu furtum factum sit, jure casus est.

^m Bract. lib. 3. fo.
144. b.
Pardon.

1 Mar. Dier 99.

1 Mar. Dier 99.

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[Break and enter.] The words of the indictment be, *Fregit & intravit*; and this is understood of an actual breaking of the house, and not of a breaking in law: for every entry into the house by a trespasser, is a breaking in law; but in case of a Burglary, every entry is not a breaking of the house, for the words of the indictment be, *Felonice & burglariter fregit, &c.* As if the doors of a mansion-house stand open, and the thief enter into the house with a purpose to steal, this is a breaking of the house in law, and yet no Burglary, because there must be an actual breaking. So it is if the window of the house be open, and a thief with a Hook or other engine draweth out some of the goods of the owner: this is no Burglary, because there is no actual breaking of the house. But if the thief breaketh the glass of the window, and with a Hook or other engine draweth out some of the goods of the owner, this is Burglary, for there was an actual breaking of the house. It is deemed an Entry, when the thief breaketh the house, and his body, or any part thereof, as his foot or his arm, is within any part of the house; or when he putteth a Gun into a window which he hath broken, or into an hole of the house which he hath made, of intent to murder or kill; or, as hath been said, a Hook or other engine into any part of the house which he hath broken, of intent to steal: this being put by him into the house, is an Entry and breaking of the house. But if he doth barely break the house without any such entry at all, that is no Burglary, for it must be *fregit & intravit*.

* If divers come in the night to do a Burglary, & one of them break & enter, the rest of them standing near to the door, or about other parts of the house, or at a Lanes end, or some Orchard-gate or Field-gate, or the like, to watch that no help shall come to defend & aid the owner & dweller, this is Burglary in all.

That which is done in *fraudem legis*, the law giveth no benefit thereof to the party. As if Thieves come in the night with Hue & Cry, pretending that they be robbed, and shall require the Constable to search for the felons, and whilst he goeth with them into some mans house, they binde and rob the Constable and dweller, this is Burglary; for in judgement of law it is their act.

[Into a Mansion-house.] The Indictment saith, *Domus mansionalis*, a mansion or dwelling-house.

a *Domus mansionalis* is divided into two branches, viz. to Inlet Edifices, as Hall, Parler, Buttery, Kitchen, and lodging-chambers, &c. and the Outlet buildings, as Barns, Stables, Cow-houses, Dairies, &c. all these are parcels of the mansion-house, and will pass by the name of *Domus mansionalis*. And albeit every mansion-house hath not all these buildings, yet every house for the dwelling and habitation of man is taken to be a mansion-house, wherein Burglary may be committed.

b If a man hath a mansion-house, and upon some accident he and all his family some part of the night are out of the house, and in the mean time a thief break and enter into the house, of intent to steal; this is Burglary, although neither the owner nor any of his family is in the house: for the Indictment of Burglary is, *Domum mansionalem, &c. fregit, &c.* and this is *Domus mansionalis*. c See hereafter the Statutes of 23 H. 8. and 5 E. 6.

d If a man do break and enter a Church in the night, of intent to steal, &c. this is Burglary, for *Ecclesia est domus mansionalis omnipotentis Dei*. e *Frustra legis auxilium invocat, qui in legem committit*. f *Domus mea domus orationis vocabitur, vos autem fecistis illam speluncam Latronum*. *Sacrilegium derivatur a sacro & legere, id est, furari*.

A Tent or Booth in Fair or Market is not *Domus mansionalis*, but of another name or kind; & but that is provided for by the Statute of 5 E. 6. ca. 9. whether the Robbery be done in the night, or in the day, the owner, &c. being within the same, sleeping or waking. But a shop wherein any person doth converse, being parcel of a mansion-house, or not parcel, is taken for a mansion-house.

Likewise

42 E. 6. Br. Cor.

380.

Britton fo. 17.

b Lib. 4. fo. 40. in

Brooks case.

Hil. 38 Eliz. per

les Justices; ibid.

c 23 H. 8. cap. 1.

5 E. 6. ca. 9.

See *inter leges*

Alveredi, c. 6.

d Britton fo. 17.

Dier 1 Mar. 99.

22 E. 3. tit. cor.

264.

22 Aff. p. 95.

26 Aff. 19.

e 27 Aff. 42.

20 E. 2. Cor. 283.

12 E. 3. Cor. 120.

Rot. Claus.

3 E. 3. m. 2. & 18.

the Ordinary

may allow cler-

gy for Sacrilege.

Lib. 11. fo. 29.

f Math. 21. 23.

g 5 E. 6. cap. 9.

Likewise a Chamber or room, be it upper or lower, wherein any person doth inhabit or dwell, is Domus mansionalis in law.

Our ancient Authoꝝ and old Records did expresse Burglary under this word, Hamslockne, or Hamsokne. The first is deribed from two Saxon words, viz. of Ham that signifieth a Mansion-house, Domus mansionalis, which to this day we call our home; and Suckne or Succen, that is, Seeken, as much to say as to seek a man in his house to slay or rob him.

It is to be noted that our ancient Authoꝝ, nor our old Book-cases do distinguish betwixen the day and the night when the offence should be committed in the house, save only the Pirroꝝ.

Si quis Hamslockne, quæ dicitur invasio domus contra pacem Domini Regis, in domo sua se defenderit, & invasor occisus est, impersecutus & inultus remanebit, si ille quem invasiit aliter se defendere non potuit: dicitur enim quoddam non est dignus habere pacem, qui non vult observare eam. And the Pirroꝝ saith, Hamsokne de auncient ordinance est peche mortel, car droit est que chescun eyr quiet en son hostel, qe la ley est.

Others derive Hamsokne from Ham, which of both sides is confessed to be a Mansion-house, and Sockne which signifies a Court, as much to say as to have jurisdiction, or to hold plea of offences done to a man in his house.

One was indicted, Quoddam clausum I. S. fregit, &c. ad ipsum interficiendum. This is not felony without an act done, though it were noctanter: for the Appeal and indictment of Burglary is, Quoddam domum mansionalem, &c. fregit & intravit. So as neither close nor any other place but the Mansion-house only is required to make Burglary. But Burglary may be committed as well in the outset buildings as in the inset, for all are parts of the Mansion-house, and he that breaketh any of the outset buildings doth break Domum mansionalem; as well as he that breaks the inset.

¶ Of intent to kill.] If a man be indicted that he in the night time did feloniously break the house of I. S. ad verberandum ipsum I. S. this is no Burglary, because it was but to beat, and not to kill. But if it were ad interficiendum I. S. then it is Burglary, though he never touched him, for the intent must be to commit felony, and not trespass, or other thing that is not felony, the words of the Appeal or Indictment being, Quoddam felonice & burglariter fregit & intravit, &c. so as there must be a felonious and burglarious intent.

¶ Or to commit some other felony.] They be Burglers which break any house or Church in the night, although they take away nothing: otherwise it is of Robbery, as shall be said hereafter. See Stanf. Pl. Cor. 30. b.

The statutes of 23 H. 8. cap. 1. and 5 E. 6. cap. 9. do not define what Burglary is, but take away the benefit of Clergy from certain kinds of Burglary. As when an actual robbery is done, and when the owner or dweller, &c. is put in fear, &c. or when the owner or dweller, &c. is sleeping or waking within any place within the precinct of the same house; these circumstances do aggravate the Burglary: and therefore the makers of those statutes took away the benefit of Clergy not in all cases of Burglary, but in those particular cases where a robbery is done, &c. But the statute of 18 Eliz. cap. 6. hath taken away the benefit of Clergy in all cases of Burglary: and hereby a good and equall proportion is kept in all cases of this nature. And both Acts of Parliament and the resolution of Judges do well agree together, which some not well observing have published manifest errors, which being in case of life, are fit to be reformed.

If any man shall break a house by day, and take away thence money or goods to the value of five shillings or more, in any part of a dwelling-house, or out-house belonging to the same, though no person be therein, for this felony he shall lose the benefit of his Clergy, so as for this offence the party shall suffer death, as in case of Burglary.

Bracon lib. 3.
fo. 444. b.
Britton fo. 33.
Statut. Wal.
fo. 6. ter. de
Snodon.
Mirr. cap. 1. §. 11.
de Hamslockne.
Exposit. vocab.
inter Statuta.
Fleta lib. 1. ca. 42.
13 H. 4. fol. 7. tit.
Cor. 299.

13 H. 4. ubi sup.

22 E. 3. cor. 264.
22 Ass. 39. & 95.

23 H. 8. cap. 1.
5 E. 6. cap. 9.

Clergy.
18 Eliz. cap. 6.

39 Eliz. cap. 15.

3 Bro. 474: Quany
Coffinbury: ca:

CAP. XV.

Of Burning of houses.

De incendiariis
inter leges A-
thelstani cap. 6.
fo. 61.

Et Canuti cap.
61. fo. 178.

Hincet numer-
atur inter scelera
inexpiabilia.

a Cap. itineris.
b Bract. l. 3. 146. b.

Britton fo. 16.

Fleta lib. 1. ca. 35.
De combustionibus.

Mirror ca. 1. §. 8.
De Ardours
cap. 2. §. 11. d.
Appeal arson.
& §. 12. cap. 3. §.
Al arson.
* Ou biens,
W. 1. ca. 15.

Hil. 7 E. 2. coram
rege, Rot. 24.
Norff.
8 H. 6. ca. 6.
See 15 H. 6.
nr. 23.

All the ancient
Authors.
3 H. 7. 10.
11 H. 7. 1.
23 H. 8. ca. 1.
25 H. 8. ca. 3.
5 & 6 E. 6. ca. 9.
4 & 5 Ph. & Mar.
cap. 4. lib. 11.
fo. 35. Alexander
Poulter's case.
3 H. 7. ubi supra.

Having now spoken of Burglaries and Felonies concerning houses, there resteth one other of that kinde, wherewith we will conclude this division, and that is, Burners of houses: which being a felony by the Common law, let us see what our ancient Authors and old Parliaments and Records have left unto us thereof.

The ancient article of the Cire was, De incendiariis nocturnis vel diurnis, & combustionibus tempore pacis nequiter perpetratis.

Hereof Bracton saith, Si quis turbata seditione incendium fecerit nequiter & in feloniam, vel ob inimicitiam, vel alia de causa, capitali sententia punietur. Nequiter dico, quia incendia fortuita vel per negligentiam facta, & non mala conscientia, non sic puniuntur, quia civiliter agitur contra tales.

Britton saith, Soit inquire de ceux que felonieusement en temps de pax aient auters blees, ou auters measons arses, & ceux que fere de ceo attain, soient arses, issint que ils soient punies per mesme le chose dont ilz pecherent.

Fleta saith, Si quis sedes alias nequiter ob inimicitiam vel prae causa tempore pacis combusserit, & inde convictus fuerit per Appellum, vel sine, capitali debet sententia puniri.

The Mirror, Ardours sont, que ardent citee, ville, maison home, maison beast ou auters careux, de lour felonie en temps de pax pur hame ou vengeance, &c. In appelle De Arson; Issint leodise, &c. Que Sebright illonque est defamy, &c. de ceo que a tiel jour, &c. en tiel meason, ou biens, mist le feu, &c. And after wards, en respons al arson; Al arson poir il dire, que l'aventure avient de mischance, & nient de felony perpenle.

So hainous was this offence, that in Anno 3 E. 1. it was declared by Parliament, Que ceux queux sont prises pur arson felonieusement fait, ne soient en ascun manner repleviables. Adjudicantur suspendi, qui ex malicia prae cogitata combusserunt magnam partem de Lynne in Com. Norff.

Upon dispersing of bills, threatening burning of houses, &c. was made high treason, whercof moze hereafter: but that Act is repealed by 1 E. 6. ca. 12. and 1 Mar. Now upon that which hath been said, our purpose is to frame a description of this felony, as may also be warranted by our Peer-books, and the common opinion and experience at this day.

Burning is a felony at the Common law, committed by any that maliciously and voluntarily, in the night or day, burneth the house of another.

Now let us peruse this description, by all his material parts.

Burning. Putting of fire into any part of a house, whereby that part burneth. For it is necessary that there be a burning, but it is not necessary that all or any part be wholly burnt, nor that the fire hath any continuance: but the intent only sufficeth not. As if one put fire into any part of a house, and it burneth not, this is no felony, for the words of the indictment be, Incendit & combussit. Again, if it doth burn, though it goeth out of it self, it is felony.

By the Common law.] This is proved by all the ancient Authors, Acts of Parliament, and books aforesaid: and the reason thereof is, for that burning of houses being an hostile action, is presumed in law to be done maliciously for revenge, and as an enemy, to consume the same by fire in time of peace

peace. It was made in speciall manner high Treason (as before is said) viz. if any threatened by casting of bills to burn an house, if money be not laid in a certain place, and after did burn the house: but this Treason is repealed by 1 E. 6. ca. 12. and 1 Mar. but yet the felony remaineth still: for In prodicione (as hath been said) implicatur feloniam.

8 H. 6. cap. 6.
3 H. 7. 10. Per
Brion.
High Treason.
Nota.

¶ **Maliciously and voluntarily.]** Proved also by the words of the Indictment, which be, Voluntariè ex malitia sua præcogitata, & felonice. For if it be done by mischance or negligence, it is no felony, as before it appeared.

The Law doth sometime imply, that the house was burnt maliciously and voluntarily. As if one intend to burn the house of A. only, and not the house of B. and yet in burning the house of A. the house of B. is burnt: in this case the burning of the house of B. is felony, because it proceeded of the malicious and voluntary burning of the house of A. and the event shall be coupled to the cause, which was voluntary and malicious: and therefore in the Indictment for the burning of the house of B. it shall be said, Voluntariè ex malitia sua præcogitata, & felonice, &c.

Pl. Com. fo. 475.

¶ **The house of another.]** This is not onely intended of Inset houses, parcell of the mansion house, but the Outset also, as barn, stable, Cow-house, Sheep-house, Dairy house, Mill-house, and the like, parcell of the mansion-house. But burning of a Barn, being no parcell of a mansion-house, is no felony: and yet if there be Corn or Hay within it, the burning thereof is felony, though the Barn be not part of a mansion-house. * But the offender is not ousted of his Clergy, but where he burnes some part of a mansion-house, or a Barn with Corn.

Tr. 44. El. 2.
Coram rege Rot.
20. 229. Lib. Int.
Coke fo. 25. b.
Lib. 4. fo. 20.
Barhams case.
* Pl. Com. 475.

Note, the ancient Authors extended this felony further then houses, viz. to stacks of Corn, Wains or Carls of Coale, Wood or other goods. And it is said in 3 H. 7. ubi supra, Certum est quod crematio domorum felonice fuit feloniam per communem legem.

The attempt to burn a stack of Corn was made felony by the statute of 3 & 4 E. 6. but this is repealed by 1 Mariz.

3 & 4 E. 6. c. 5.

Burning of the frame of a house was made felony by the statute of 37 H. 8. because the frame of a house is no house: but that is repealed by 1 E. 6. ca. 12. & 1 Mariz.

37 H. 8. cap. 6.

43 El. ca. 13. It is felony if any within the Counties of Cumberland, Northumberland, Westmorland, or the B. of Durham, wilfully and of malice burn or cause to be burnt any barn or stack of corn or grain, without benefit of Clergy.

43 El. cap. 13.

Note a diversity between the Indictment of Burglary and burning: for the Indictment of Burglary must say, (as hath been said) domum mansionalem, but so need not the Indictment of burning, but domum, viz. a Barn, &c. Pall-house, or the like.

Braet. lib. 3. fo.
146. b.

CAP. XVI. Of Robbery.

See the 1. part of
the Institutes,
Sec. 501.

Custum. de
Norm. cap. 71.

Int. leges Canu.
cap. 61. fo. 118.

Lamb.

Bracton li. 3.
fo. 146.

Bracton lib. 3.
fo. 150. b.

Britton fo. 22.

Fleta lib. 1.

ca. 37. Mirror

cap. 1. §. 16.

Britton & Fleta

ubi supra:
14 E. 3. cor. 115.

Bract. li. 3. fo.
150. b.

10 H. 3. Cor. 434.

Britton fo. 24. b.

44 E. 3. 14.

4 H. 4. 2.

Robbery is a felony by the Common law, committed by a violent assault upon the person of another, by putting him in feare, and taking from his person his money or other goods of any value whatsoever. *De Inter leges Canuti, Apertæ compilationes numerantur inter scelera hominum inexpiabilis.*

¶ Robbery.] ^b It is derived de la Robe, both because in ancient times (as sometimes yet is done) they bereave the true man of some of his robes or garments, and also for that his money or other goods are taken from his person, that is, from or out of some part of his garment; or robe about his person. And is ranked in this place, for that it concerneth not only the goods, but the person of the stoner. We call it Roberia & rapina, and the thief Raptor. Whereof Bracton saith, *Est enim quasi furtum rapina, quæ idem est, quantum ad nos, quod roberia, & est genus contraactionis contra voluntatem domini, & similis poena sequitur utrumque delictum, unde prædo dicitur fur improbus: quis enim magis contraactionem rem alienam invito domino, quam ille qui rapit?*

¶ Felony by the Common law.] This is agreed of of all, both ancient and late, without any question. And it is deemed in law to be amongst the most heinous felonies, *Crimen improbitissimum.*

¶ Violent Assault.] This agreeth with the Indictment, *Violenter & felonice cepit, &c.*

¶ By putting him in fear.] This agreeth also with the Indictment: and this circumstance maketh the difference between a Robber and a Cutpurse: both take it from the person, but this takes it clam & secretly, without assault or putting in fear, and the Robber by violent assault, and putting in feare. If one cut a purse with money in it above twelve pence, he shall be hanged, and the benefit of Clergy is taken from him. But of ancient time the punishment was otherwise. *S. capus in London cum bursa quam scidit cum tribus solidis, & hoc non potuit dedicare, & ideo amittat dextrum pollicem.* Britton saith, *Des corsors des burses, voylons que celui que la bourse coupa, si auer mavieste ne eyt feyt, eyt judgement de pillory; & silz eurent emble auer chose meinder de 12 deniers, perdent un oraille; & si le chose passe 12 deniers, eurent judgement de mort.*

¶ By taking.] The words of the Indictment be, *Violenter & felonice cepit.* *Hic opus est interpretare.* For it must be understood that there is an actual taking in deed, and a taking in law, and that may be when a thief receiveth, &c. For example: If thieves rob a true man, and finding but little about him, take it, this is an actual taking; and by meanes of death, compell him to swear upon a book to fetch them a greater sum, which he doth, and deliver it unto them, which they receive, this is a taking in law by them, and adjudged Robbery: for feare made him to take the oath, and the oath and feare continuing, made him bring the money, which amounteth to a taking in law. And in this case there needs no special Indictment, but the generall indictment (*quod violenter & felonice cepit*) is sufficient. And so it is, if at the first the true man for feare deliver his purse, &c. to the thief.

This

This word [cepit] necessarily implieth that the thief must be in possession of the thing stoln. For example, if the bag or purse of the true man be fastned to his girdle, &c. and the thief the more easily to take the bag or purse, do cut the girdle, whereby the bag or purse falleth to the ground, this is no taking, for the thief had never any possession thereof; & sic de similibus: but if the thief had taken up the bag or purse, and in striding had let it fall, and never took it again, this had been a taking, because he had it in his possession; for the continuance of his possession is not required by law.

¶ From his person.] The words of the Indictment be, a persona &c. If the true man seeking to escape, for the safeguard of his money, cast it into a bush, which the thief perceiving takes it; this is a taking in Law from the person, because it is done at one time. If the true man had cast off his surcote, or other uppermost garment, and the same lying in his presence, a thief assault him, &c. and take the surcote, this is robbery; for that which is taken in his presence, is in law taken from his person: And so it is of the horse of a true man which stands by him; & sic de similibus.

14 E. 3. Cor. 115.

In ancient Authors and Records, in Pleas of the Crown, you shall read of Sakebere, &c. whom we will derive and explain. Sakebere, Sacbere, or Sacburgh. Sac, or Sak is an ancient French word, and signifieth a bag, purse or pouch. So that Sackbere is he that did bear the bag, &c. and in legall understanding is he that was robbed of his money in his bag. And this agreeth with the interpretation thereof by Bracton, viz. Furum verò manifestum est, ubi latro deprehensus est seiscus de aliquo latrocinio, viz. Hondhabende, and Bacherende, & insecutus fuerit per aliquem cujus res illa fuerit, qui dicitur Sacapurch. And herewith agreeth Fleta, lib. 1. c. 42. §. Sunt autem, &c. And Britton fo. 22. b. & 72. b. agreeth herewith, and calleth him Sakebere; and so doth Justice Stanford, Pl. cor. fo. 28. term him, which (as we take it) is his right name derived of these two words, Sac and bere, that is, he that did bear the bag, &c.

BraG. lib. 3. fol. 150. b.
Fleta l. 1. cap. 42.
Britton fo. 22. b.
& 72. b.
Stanf. fo. 28.

¶ Of what value soever.] Though it be under the value of twelve pence that is taken, (as to the value of a penny or two pence) it is robbery, but somewhat must be taken; for the assault only to rob without taking some money or goods is no felony, and such opinions as seem to the contrary, were maintained by that which then was anciently holden, Quid voluntas reputabatur pro facto. See before cap. High Treason, fo. 5. Infidiator viarum.

14 E. 3. Cor. 115.
22 Aff. p. 39.
27 Aff. 38.
24 E. 3. 42.
13 H. 4. 7.
9 E. 4. 28.

CAP. XVII.

In what case breakers of prisons are Felons.

WE have spoken sufficiently hereof in his proper place, in the exposition of the Statute of 1 E. 2. de Frangentibus prisonam. Whely this is to be added, that in case of felony, the offender shall have the benefit of Clergy for the breach of prison.

In the second part of the Institutes upon the Statute of 1 E. 2. De frangentibus prisonam.

CAP. XVIII.

Where escape Voluntary is Felony.

VV We have also spoken somewhat hereof in the exposition of the said Act of 1 E. 3. And the voluntary escape can be no felony in the Statute, unless the Prisoner be under custody by lawfull Warrant expressing the offence, which you may see there at large.

2. There must be a felony done at the time of the escape: for a relation which is but a fiction in law, shall never make a man a felon, as likewise there it appeareth. See Stanford lib. 1. cap. 26.

CAP. XIX.

Of Felony by stealing, carrying away, withdrawing or avoiding of Records, &c.

8 H. 6. cap. 12.

8 H. 6. cap. 12.

SI ascun Record ou parcel d'icel, Brief, Retorn, Pannell, Proces, ou Garrant D'attorneyen les courts le Roy, de Chancery, Eschequer, lun Banke ou lauter, ou sa Tresorie, soit voluntairement emblee, emport, retraits, ou arvoider per ascun Clerke ou auter person, a cause de quel ascun Judgement soit reverse: Que tiel embleor, emporter, retraher & avoider, leur procurators, concellers & abettors ent endites, & sur proces sur ceo fait, ont duement convicts per leur proper confession, ou per enquests prender des loyall homes, (dont la moitie soit des homes d'ascun court de mesme les courts, & lauter moitie des autres) soient adjudges pur felons, & encorgent la paine de felony, & que les Judges de les Courts de lun Banke ou de lauter eyent power de oier & terminer tielz defaults devant eux, & ent fait punition, come devant est dit.

IF any Record or parcel of the same, Writ, Retorne, Panell, Proceffe or warrant of Attorney in the Kings Courts of Chancery, Exchequer, the one Bench or the other, or in his Treasury, be willingly stoln, taken away, withdrawn or avoided by any Clark or by other person, because whereof any judgement shall be reversed: That such stealer, taker away, withdrawer or avoider, their procurators, counsellors and abettors, thereof indicted, and by Proces thereupon made thereof duly convict by their own confession, or by inquest to be taken of lawfull men, (whereof the one half shall be of the men of any Court of the same Courts, and the other half of others) shall be judged for felons,

felons, and shall incur the pain of felony. And that the Judges of the said Courts, of the one Bench or of the other, have power to hear and determine such defaults before them, and thereof to make due punishment, as afore is said.

The mischief before this Statute was, That whereas Records are of such high nature and credit as they import in themselves absolute verity without contradiction, to the end that there might be an end of contention and contraversion, and men might rest in safety and repose, certain Clerks and other persons did oftentimes imbesell Records or some parcel of them, and sometime a Writ, Return, Panel, Proces or Warrant of Attorney, or case or writ of the same; by reason whereof divers judgements were avoided or reversed, whereby no man (as the Statute saith) had any thing in surety: This was a great misprision, for the which the offenders therein might be punished, either at the suit of the King by indictment, or at the suit of the party by an Action upon his case. See the Record concerning this matter following. *Placita coram Justiciariis de Banco termino Trinitatis Anno 19 E. 1. Rot. 57. indors.*

Radulphus de Greshope, communis Attornatus de com. Westmerland, maliciose Rotulum excutavit & abscedit. & ideo per annum & diem committitur Turri London; postea anno 29 E. 3. per mandatum Regis liberatur, & per Justiciarios ei est inhibitum ne de cetero in eadem Curia de aliquibus negotiis se intromittat.

Which remedy and punishment were thought too weak against Clerks and other persons, which (committing such things) commonly were of small ability: therefore this Act, considering the danger of the offence, maketh the same felony, as by the letter thereof appeareth.

¶ *Si ascun *Record.]* A Record is regularly a Monument or Act judicial before a Judge or Judges in a Court of Record, entred in a Parchment in the right Roll. It is called a Record, for that it recordeth or beareth witness of the truth, and is derived of the Verb Recordor, whereof the Poet speaketh,

— Si rite audita recordor.

It hath this sovereign privilege, that it is proved by no other but by it self. *Monumenta (quæ nos Recordæ vocamus) sunt vetustatis & veritatis vestigia.* And albeit the cause adjudged be particular, yet when it is entred of Record, it is of great authority in Law, and serves for perpetuall evidence, and therefore ought to be common to all, yea, though it be against the King; as it is declared by Act of Parliament in Anno 46 E. 3. which you may read in the Preface to the Third Book of my Reports.

* See the first part of the Institutes Sect. 117. for this word.

49 E. 4. 3. b. 16 Eliz. Dier 330. a. Virgil.

Rot. Parl. 46 E. 3. 9 H. 7. 16. See the Preface to the third Book.

¶ *Brief, Return, Panel, Proces, ou Garr' D'attornie.]* All these are sufficiently known, and yet have we treated of the same in the First part of the Institutes.

¶ *En les courts le Roy.]* Here are expressly named four of the Kings Courts, viz. the Chancery, the Exchequer, the Kings Bench and the Court of Common Pleas, and hereunto is added the Kings Treasury: so as this Act extendeth not to any other Court or place then is here named.

¶ *Chancerie.]* This must be understood of the Court of Chancery, which proceedeth according to the course of the Common Law, as in case of Privilege, of Scire facias upon Recognizances, Traverses of offices, and the like: for as to these it is a Court of Record, but as to the proceeding by English Bill in Course of equity, it is no Court of Record, for thereupon no Writ of Error lieth, as in the other cases.

37 H. 6. 14.

¶ *Ou la Tresorie.]* The Kings Treasury is called *Thesauraria Regis*, the place where the Kings Treasure is kept. This Treasure is twofold: viz. his Money or Coin; and another that is far more precious and excellent, and those

accessories before, yet it taketh not away accessories after, but leaveth them to the Law, contrary to the opinion of Justice Stanford. See before the Exposition of 3 H. 7. for taking away of women against their will.

Stanf. Pl. Cor.
44. b.
3 H. 7. cap. 2.

¶ Ent endites.] If the acts that make this felony be committed in two Counties, the Indictment faileth, as hath been said before upon the Statute of 2 & 3 E. 6. cap. 24. And this case of felony rising in two Counties, is not holpen by any Statute yet made.

2 R. 3. fo. 10.

¶ Dont la moity soit des homes dascun court.] Here is a party Jury, the one half to be of the Officers and Clerks of the Courts, &c. for their knowledge, and for the better information of the others.

¶ Et que les Judges des dits Courts. de lun Bank ou de lautre eyent power de oier & terminer tiels defaults devant eux, & ent faire punition, come est avantdit.] This Clause is in nature of a Commission to the Justices of either Bench, if the offence be committed in the County where the Benches do sit. And the Justices of either Bench have a concurrent authority, and which of them enquire first shall proceed: But if the felony be committed in another County then where the Benches sit (as for example, in Surrey, Hertfordshire, &c.) there the Justices ought to have a Commission. But if the Bench sit in Middlesex, and the felony is done in London, in which case a Commission is requisite, as is aforesaid. But then some have said, that by the Charters of London confirmed by Parliament, the Mayor ought to be principall in the Commission, and the Mayor is none of the Judges authorized by this Act to hear and determine this felony, but the Justices of the one Bench or the other: and therefore the Statute being penall, and to be taken strictly, no proceeding can be. Sed salva res est: For the Charters of the City of London extend only to such offences committed in London, whereof the Mayor with others by Commission, may inquire, hear and determine, and not to such offences so annexed by authority of Parliament to other persons (as in this case to the Justices of the one Bench or the other) as the Mayor is not warranted by the said Act to inquire, &c. And therefore a Commission in this case may be made to the Justices of the one Bench or the other, omitting the Mayor, ne Curia Regis deficeret in justitia exhibenda.

2 R. 3. 10.

2 R. 3. 11.

And albeit this kinde of felony is an heinous offence, yet may the offenders therein have their Clergy: for until the reign of H. 7. (that we may note it once for all) the benefit of Clergy was not taken away by any Act of Parliament in case of Felony. As for the Statute of Bigamis made in 4 E. 1. it was but an exception and allowance of the constitution made at the generall Councell at Lyons concerning the same, as before hath been said. But (as we remember) the first Statute making a new felony that took away the benefit of Clergy, was the Statute of 7 H. 7. concerning Souldiers. Vide Lib. 8. fol. 160. & lib. 11. fol. 11.

4 H. 7. cap. 13.
12 H. 7. cap. ult.

7 H. 7. cap. 1.

C A P. XX.

Of Felony in such as use the craft
of Multiplication.

5 H. 4. ca. 4.

NOne from henceforth shall use to multiply gold or silver, or use the craft of Multiplication: and if any the same doe, he shall incur the pain of felony.

This is the Shortest Act of Parliament that we remember; before the making whereof, divers of the Nobility, Gentry, and others did waste and consume a great part of their inheritance and wealth about the art of Multiplication, by the subtle and sinister perswasion of certain impostors and deceivers, which took upon them to be skilfull therein, and to be able to multiply gold and silver, being themselves for the most part very poor and indigent persons, of whom it was said, *Quod pollicentur aliis ingentes divitias, & ipsi petunt parvas drachmas.* See Chaucer our English Poet, who wrote about the time of the making of this Act, in the tale of the Channons Preoman, fo. 63, (in libro meo,) That the end of this sliding and cursed craft (so full of imposture and deceit) is extreame beggary. He is worth the reading, for he discovereth the secrets of this Craft, as our Act tearms it.

Now seeing the end of this feigned Art of Multiplication is meer deceit, and tendeth to the undoing of many; at this Parliament the use of this craft of Multiplication is made felony. For the better understanding of that which shall be said, it is to be known that there are six kinds of metalls, viz. Aurum, Argentum, As five Cuprum, (quia inventum fuit in Cipro) Stannum, Plumbum, & Ferrum; that is to say, Gold, Silver, Copper, Tinne, Lead, and Iron: for Chalybs Steel is but the harder part of Iron; and Orichalcum, Ayrichalcum, viz. Lattyn or Brasse, is compounded of Copper and other things.

[The craft of Multiplication.] That is, to change other metalls into very gold or silver. And this they pretend to doe by a Quint essence, or a fifth essence. Four Essences or Elements we know, Fire, Air, Water, and Earth: but, say they, this Quint essence is a certaint subtil and spiritual substance extracted out of things by separation from the four Elements, differing really from their essence, as Aqua viz., the spirit of wine, or the like, and this is called Elixar, or the Philosophers Stone, and it is part of Alchemie or Chemie, in Latine Ars Chemica. The offenders therein are called multipliers, Chemists, Alchemists, &c. There may be Accessories to this new felony both before and after. King Henry the sixth by his Letters Patents, De concilii sui deliberatione deputavit Willm Cautelo & alios cives civitatis London ad investigandam veritatem super hiis quæ in scriptis erunt eis monstrata, pro multiplicatione Numismatis, tam de auro quam argento, & quicquid in præmissis egerint, cum eorum opinione referrent in scriptis regi & concilio suo.

The like Letters Patents anno 35 H. 6. pro Thoma Harvie & aliis.

Rex ex sua regali prerogativa, &c. dedit licentiam Johanni Faceby & aliis ad investigandum, prosequendum & perficiendum quandam preciosissimam medicinam, quintam essentiam, Lapidem Philosophorum nuncupatum, nec non potestatem faciendi & exercendi transmutationes metallorum in verum Aurum & Argencum, with a Non obstante of this Statute of 5 H. 4. By these Letters Patents this Act is more explained then by any Record we have seen.

Now these several kinds of metals, as is supposed, proceed originally from Sulphur

* 7 E. 6. Dier 88.
Rot. Pat. 34 H. 6.
m. 13.
a Ro. Pat. 35 H. 6.
b Ro. Pat. 34 H. 6.
m. 7.

Hanc artem sophisticam imposturam nominat Melanchthon. Mentiendi & fallendi artem Petrarch. Eras. in Colloquio. De monis prestigias Peucerus. Chaucer ubi supra, The cursed and sliding craft. Feritur in summum quicquid ineptus agit. See Pancirollus, Int. nova reperta Tit. 7. fo. 357.

phur & quicksilver, as from their father and mother, & other things concerning the same, you may at your leisure read in George Agricola lib. 10. ca. 1. Encelms lib. 1. ca. 1. Pl. com. 339.

Vide Stanf. Pl.
Cor. 37. b.

Almighty God in the fourth day created the earth, and no mention is made of metals, so that they were as parts of the earth.

Gen. c. 1. v. 9.
cap. 2. v. 11.

The fatall end of these five are beggery; This kinde of Alchymist, the Poponopolist, the Concealer, the Informer, and Poetafters.

Sape pater dixit, Studium quid inutile tentas?

Mzonides nullas ipse reliquit opes.

I could give examples (of mine own observation) of all these, if it were pertinent to our purpose.

CAP. XXI.

Of Felony in Hunters in the night, or with painted faces, in any Forest, Park, or VVarren.

AT every such time as information shall be made of any unlawfull huntings in any Forest, Park, or Warren by night, or with painted faces, to any of the Kings Councill, or any of the Justices of the Kings Peace in the County where any such hunting shall be had, of any person to be suspected thereof, it shall be lawfull to any of the same Councill, or Justices of Peace, to whom any such information shall be made, to make a warrant to the Sheriff of such County, or to any Constable, Bailiff, or other Officer within the same County, to take and arrest the same person and persons of whom such information shall be made, and to have him or them before the maker of the same warrant, or any other of the Kings said Councill, or his Justices, of Peace of the same County. And that the said Councillor or Justice of Peace, before whom such person or persons shall be brought, by his discretion have power to examine him or them so brought, of the said hunting, and of the said doers in that behalf: and if the same person * wilfully conceal the same huntings, or any person with him defective therein, that then the same concealment be against every such person so concealing felony, and the same felony to be enquired of and determined as other felonies within this Realm have used to be; and if he then confesse the truth, and all that he shall be examined of and knoweth in that behalf, that then the said offences of huntings by him done, be against the King our Sovereign Lord but trespassse finable, by reason of the same confession, at the next generall Sessions of the peace to be holden in the same County by the Kings Justices of the same Sessions there to be sessed. And if any rescous or disobedience be made to any person having authority to do execution or Justice by any such warrant, by any person the which so should be arrested, so that the execution of the same warrant thereby be not had, that then the same rescous and disobedience be felony, inquirable and deter-

1 H. 7. ca. 1.

* See the exposition of this word [conceal] hereafter in this chap.

determinable as is aforesaid. And over this, it is enacted and stablished, that if any person or persons hereafter be convict of any such huntings with painted faces, vizors, or otherwise disguised, to the intent they should not be known, or of unlawfull hunting in time of night, that then the same person or persons so convict, to have like punishment, as he or they should have if he or they were convict of felony.

Now let us peruse the words of this new and ill-penned Law.

¶ By night, or with painted faces.] That is to say, either by night, or in the day with painted faces, for that doth equall the case of the night, in respect the offenders cannot be known or discerned in regard of such disguisings. And albeit the body of the Act speaketh onely of painted faces, yet it extendeth to vizors and other disguisings, for those words are in the Preamble rehearsing the mischief, and the remedy must be applicable thereunto, and the last branch of this Act doth make this point clear.

¶ As information shall be made, &c. of any person to be suspect.] Hereby it appeareth, that a bare information without shewing just cause of suspicion at the least, is not sufficient to ground a warrant according to this Act, for the words be, [Of any person to be suspected.] And this Act is generall, and extends to all persons of what estate or degree soever, and as well to women as to men: for the words be [if any person.] And generalis verba sunt generaliter intelligenda. And it is necessary for him that taketh the information, to take it in writing, because it is the ground of his warrant.

31 E. 1. tit. Forests, Rast. 19.

¶ Of any unlawfull huntings in any Forest, Park, or Warren.] This Act doth not extend to any Chase of the King or of any other person, neither doth it extend to any Forests, Parks or Warrens in use or reputation, and which are not Forests, Parks or Warrens in law. See the first part of the Institutes, Sect. 378. what a Forest, a Chase, and a Park, &c. is.

¶ To any of the Kings Councill.] This is understood of the Kings Privy Councill; and any one will serve, but he must be dwelling in the County where such offence is committed.

¶ Or to any the Justices of the Kings Peace, &c.] And likewise any one Justice of the Peace will serve.

¶ Warrant.] This warrant ought to be in writing under the seal of him that maketh it.

¶ Before the maker of the same warrant, or any other, &c.] So as the Officer may carry the party arrested before any Privy Councello, or Justice of Peace within that County, and to that effect must the warrant be made.

¶ By his discretion have power to examine him or them so brought of the said hunting, and of the doers in that behalf.] So as the examination must consist upon two parts: First, of the hunting by the party himself; Secondly, of other doers in that behalf.

¶ And if the said person wilfully conceal the said hunting, or any person with him defective therein.] This branch being in the disjunctive, if he conceal either his own offence, or of the other misdoers with him therein, the letter of this Act is that it is felony, but by construction

D. Haward tempore H. 1. fo. 24.
Vide Holl.
10 R. 1. 153.
Vide Camden
Brit. 210.

struction upon the whole Statute it is no felony: And a hunting without killing of any game, is within the danger of this Statute.

This Act is to be taken strictly; for it is the first law that was made for the making of any hunting felony, against that excellent and equal branch of Char-
 ta de Foresta; Nullus de cetero vitam vel membra pro venatione nostra, &c. See the Statutes of 21 E. 1. 1 E. 3. Stat. 1. cap. 8. 7 R. 2. cap. 4. Westm. cap. 8. Regist. fol. 9. F. N. B. fo. 67. Vet. N. B. 41. 45 E. 3. 7. 33 H. 8. Dier 50.

Chart. de Forest.
cap. 10.

The old Statutes concerning the Forests are called the good old Laws and Customes, and commanded to be observed; and therefore this new Act of H. 7. is too severe for beasts that be fera natura, whereof there can be no felony by the Common law, and that in case of the Forests, Parks, &c. of Subjects, which never was before. And therefore the Judges have made a favourable construction, as hereafter in this Chapter you shall find.

Rot. Parl. 9 H. 4.
nu. 49.

¶ And if he confesse the truth, and all that he shall be examined of and knoweth in that behalf.] That is, of his own guiltiness and of other misdoers with him, then this Act makes it no felony, but trespasss finable, as it was before. But it must be a wilfull concealment: therefore if he knew not the names of the other misdoers, or knew not whether they were there or no, it is no offence, for the concealment must be wilfull. And seeing there is no time limited by this Act, and the concealment ought to be wilfull, it were reason that the information should be made in convenient time after the fact done.

¶ And if any rescous or disobedience be made to any person having authority to do execution of Justice by any such warrant, by any person the which so should be arrested, so that execution of the same warrant be not had, that then the same rescous & disobedience be felony. Here it is to be observed that the hunting being as yet no felony, the rescous could not be felony, if this branch had not been. Herein two things are to be considered. First, that it extendeth not but to the rescous or disobedience that is committed by the party himself that is to be arrested, and not to any other. Secondly, that if the party rescue himself, yet if he be pursued and taken, so as execution of the warrant be had, it is no felony, as it is manifest by the letter of this branch.

¶ And over this be it enacted, &c. That if any person or persons hereafter be convicted of any such huntings with painted faces, visors, or otherwise disguised, &c. or of unlawfull hunting in the night, * that then the same person or persons so convicted, to have like punishment as he or they should have if they were convicted of felony.

* Nota [that the]
&c. So as before
such conviction
there is no felony.

Gerald the Queens Attorney general (who was a grave and reverend man) said openly in the Kings Bench, that it had been resolved by the Justices upon this Statute, that if a man in the night, or by day with painted face do hunt, &c. and being examined according to the Act concealeth it, this is (upon the construction of the whole Act) no felony; for the first clause concerning concealment, and this clause which now we handle, must be coupled or joined by construction together, viz. If any person be convicted of such hunting with painted face, or of unlawfull hunting in the night, this conviction must be upon not guilty pleaded, which the Justices expounded to be the concealment intended in the first branch, for they held that it ought to be a judicial concealment, and not an extrajudicial concealment, before one of the Justices of Council, or a Justice of Peace; which may lie in averment, so as before it be felony, he must be convicted of such hunting, &c. upon not guilty pleaded first: and after such conviction

Mic. 19 & 20 El.
in the Kings
Bench a report of
the resolution of
the Justices upon
this branch.

* Concealment
expounded.

then must he be indicted again. Super tota materia, that he felonice did conceal, &c. against the form of the Statute. And if the offender upon the first indictment confesseth the indictment, then it is such a judicial confession as this Act intendeth; and no felony within this Statute. And this we heard the Attorney repeat, and then observed it, which concurring with our own opinion we thought good to publish, and the rather for that in Master Lambards book of Justices of Peace, amongst his Precedents of Indictments, an erroneous Precedent of an Indictment is of felony for the concealment, &c. upon examination before Justices of Peace.

Dier 33 H. 8.
fol. 50. a.

It is said 33 H. 8. that chasing in Parks is made felony, (intending this Statute) notwithstanding it may be made trespass at the pleasure of the party, which we think is the clearest way.

Now what time shall be adjudged night, See before in the Chapter of Burglary. For this felony the Delinquent may have his Clergy: See Stanford, fo. 37. b.

CAP. XXII.

Of Felony for Imbefilling the Kings Armour, Ordnance, &c. or Victuall,
to the value of Twenty shillings,
provided for Souldiers.

31 El. cap. 4.

BE it enacted by the Authority of this present Parliament, that if any person or persons, having at any time hereafter the charge or custody of any Armour, Ordnance, Munition, Shot, Powder or Habillements of warre of the Queens Majesties, her heirs or successors, or of any Victualls provided for the victualling of any Souldiers, Gunners, Mariners, or Pioners, shall for any lucre or gain, or wittingly, advisedly, and of purpose to hinder or impeach her Majesties service, imbefill, purloin, or convey away any the same Armour, Ordnance, Munition, Shot, or Powder, Habillements of war, or *Victualls, to the value of twenty shillings, at one or several times; That then every such offence shall be judged felony, and the offender and offenders therein to be tried, proceeded on, and suffer, as in case of felony. Provided alwaies, and be it enacted by the Authority aforesaid, that none shall be impeached for any offence against this Statute, unlesse the same impeachment be prosecuted or begun within the year next after the offence done. And that this Act, nor any thing therein contained, nor any attainder nor attainders of any person or persons for any offence made felony by this Act, shall in any wise extend, or be adjudged, interpreted or expounded to make the offender or offenders to forfeit or lose any lands, tenements, or hereditaments, any longer then during his or their life or lives, or to make any corruption of blood to any the heir or heirs of any such offender or offenders, or to make the wife of any such offender, to lose or forfeit her dower, or title of dower, of or in any lands,

tene-

* Nota for
Victualls.

tenements or hereditaments, or her action or interest to the same; any thing in this Act contained, or any Attainder or Attainders hereafter to be had for any offence made felony by this Act to the contrary notwithstanding. And that such person and persons as shall be impeached for any offence made felony by this Statute, shall by virtue of this Act be received and admitted to make any lawfull proof that he can, by lawfull witness or otherwise, for his discharge and defence in that behalf, any Law to the contrary notwithstanding.

This is a necessary law, and so penned, as it requireth no curious expolition.

¶ **Ordinance.]** That is, Guns or Artillery, so called, of an Order or Ordinance anciently made, of what bore, size or bulk the same should be. And albeit the Ordinance (that we can find) is not extant, yet the name remaineth.

¶ **Habillements of war.]** Habilement is properly apparell or clothing: but in legal understanding it doth not only extend to Harness and Armour, but to all Utensils that belong to war, without which men have not ability to maintain war.

This Act making a new felony, hath five excellent provisions, worthy to be imitated in all like cases of new felonies. First, that none shall be impeached for this new felony, but within a year after the offence done. Secondly, that the offender should not lose his lands any longer then during his life. Thirdly, this Act makes not any corruption of blood, but that his heir shall inherit. Fourthly, not to make the wife lose her dower. Fifthly, that such persons as shall be impeached for any offence made felony by this Act, shall be admitted to make any lawfull proof, & by witness or otherwise, for his discharge and defence in that behalf.

In the Statute of 4 Jacobi Regis there is also a good president, viz. [All which trials (viz. in cases of felony in that Act before mentioned) b first, for the better discovery of the truth, and secondly, for the better information of the consciences of the Jury and Justices, there shall be allowed to the party so arraigned the benefit of such witnesses only to be examined upon oath that can be produced for his better clearing and justification:] that as witnesses are produced and sworn against him, so he may have witnesses produced and sworn for him, for Jurato creditur in judicio. And to say the truth, we never read in any Act of Parliament, ancient Author, Book, case or Record, that in criminal cases the party accused should not have witnesses sworn for him; and therefore there is not so much as *scintilla juris* against it. And I well remember when the Lord Treasurer Burleigh told Queen Elizabeth, Madam, here is your Attorney General (I being sent for) *Qui pro Domina Regina sequitur*; he said he would have the form of the Records altered; for it should be *Attornatus Generalis qui pro Domina veritate sequitur*. And when the fault is denied, truth cannot appear without witnesses.

Hobelarius (id est, a Light-horseman) electus in Scotiam recepit armaturas & denarios, ibidem serviturus: postea non proficiscitur per mandatum Regis, & recusavit reddere armaturas & denarios, &c. per Juratores est culp. & committitur Marechallo, & finivit Regi 10. li. & invenit securitatem ad armaturas redeliberandas, &c.

Donum est scire & sequi.

Vid. hereafter, Cap. of felony, for any having a Plague-sore a more special provision.

a Nota.

4 Jac. Regis, cap. 1.

b Nota, two excellent means for advancement of justice.

Hil. 16 E. 3. coram Rege.

Rot. 129. North.

CAP. XXIII.

Of Felony in such as pass the Sea to serve Forain Princes, &c. or do serve Forain Princes, &c. without taking the Oath of Obedience.

3 Jac. cap. 4.

Every Subject of this Realm that shall go or pass out of this Realm to serve any Forain Prince, State or Potentate, or shall pass over the Seas, and there shall voluntarily serve any such Forain Prince, State or Potentate, not having before his or their going or passing, as aforesaid, taken the Oath of Obedience (prescribed by that Act) before the Customer and Comptroller of the Port, Haven or Creek, or one of them, or their or either of their Deputy or Deputies, shall be a Felon.

Some have objected, that the going or passing out of this Realm to serve, &c. cannot be tried; for that offences done out of the Realm cannot, without a special provision, be tried within the Realm. And it is a sure Rule, that in criminal causes concerning life or member, *ubi deliquit, ibi punietur*: the offence is local, and cannot be tried but where it is committed, nor cannot be alleged to be in any other place than where in truth it was done. To this it is answered, that by a latter clause in this Act, this felony shall be tried in the Town wherein the Haven or Port is wherein he went or passed over: which Clause is, And be it further enacted, that all and every offence to be committed or done against this present Act, shall and may be enquired of, heard and determined before the Justices of the Kings Bench, Justices of Assize and Gaole delivery in their several Assizes; and all offences, other then Treason, shall be inquired of, heard and determined before the Justices of Peace in their Quarter Sessions, to be holden within the Shire, Division, Link or Liberty where such offence shall happen. So as by the purview and meaning of the makers of this Act, this felony must be tried in the County where he went or passed over, & consequently in that Town where part of the act was done. And these words [and wherein such offence shall be committed] must be construed in this case, where part of the offence is committed. For, *Sic interpretandum est: ut verba accipiantur cum effectu*: and by the express words, all and every offence to be committed or done against this present Act must be inquired of, heard and determined, &c. And therefore the felony cannot pass away with impunity, and that which is done out of the Realm shall be proved to the Jury in evidence. Note, where a man treason by this Act is made, it is enacted to be tried where the offender is taken.

See 33 H. 8. ca. 7.
Simile.

¶ Every subject of this Realm.] This branch extends to all persons of what estate, degree or profession soever.

¶ To serve.] Albeit the party did not serve, yet if the offender went or passed over to serve without taking the Oath, he is in danger of this Statute. And this extendeth to any kind of service either in Camp or Army, or in house or otherwise.

Prince.

¶ Any forain Prince.] [Princeps] Prince is here taken for the person that is Primus, i. Qui primum locum & gradum obtinet, whether he be King, or any other that hath sovereign authority, by what name or title soever.

The

The word hath other significations, but not pertinent to the exposition of this Act.

¶ **State.]** The former word [Prince] includeth any that is a Monarch, or in nature of a Monarch, or an absolute Prince. This word [State] extends to any State, either Aristocratical, where few be in authority, or Democratical, where the people have the chief government without any Superiour, saving such as they elect and choose.

¶ **Potentate.]** This is a large word, and extendeth to Potentates as well Ecclesiastical as Temporal.

¶ **Or shall pass, &c. and there shall voluntarily serve.]** Although he went not over of purpose to serve, but upon some other occasion; yet if he after voluntarily serve any such forain Prince, State, or Potentate, and have not taken the Oath, he is a felon.

¶ **The Oath of Obedience.]** This is particularly set down in the said Act.

¶ **And that if any * Gentleman or person of higher degree, or any person or persons which have born or shall bear any office or place of Captain, Lieutenant, or any other place, charge or office in Camp, Army or Company, of Souldiers, or Conductor of Souldiers, shall after go or pass voluntarily out of this Realm to serve any such Forain Prince, State, or Potentate, or shall voluntarily serve any such Prince, State or Potentate, before he and they shall become bound by Obligation with two such sureties as shall be allowed by the Officers, &c. shall be a Felon.**

* Vid. heretofore cap. 34. in fine. Second part of the Institutes. The Statute of additions. 1 H. 5. cap. 7.

By this Branch, if he be a Gentleman, or of higher degree, or any such Military man as here is described, because he is able to doe more harm, if he be so disposed, he must not only take the Oath by the former branch, but he must become bound by this branch with two sureties, &c. The form of the Obligation is set down in this Act. The exposition of the former branch giveth light to the understanding of the residue of this Clause.

There is a Proviso, that no attainder of felony made felony by this Act, shall take away dower, nor make or work any corruption of blood, or disinheritance to the heir. The offenders in any of the said cases of felony may have the benefit of their Clergy.

C A P. XXIX. Of Felony in Purveyors.

See in the fourth
part of the Insti-
tutes, cap. Chan-
cery, Articles
against Cardinall
Woolsey, Artic.

33, 35, 36.

Artic. sup. Chart.
cap. 2.

18 E. 2. cap. ult.

5 E. 3. cap. 4.

5 E. 3. cap. 2.

25 E. 3. cap. 1.

29 E. 3. cap. 15.

36 E. 3. cap. 2.

Vid. Stat. Fl.

Cor. 27. b. 1.

27 E. 3. cap. 24.

27 E. 3. cap. 24.

27 E. 3. cap. 24.

27 E. 3. cap. 24.

27 E. 3. cap. 24.

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27 E. 3. cap. 24.

27 E. 3. cap. 24.

27 E. 3. cap. 24.

SEE the Statutes of Artic. super Chartas, anno 28 E. 1. cap. 2. 18 E. 2. cap. ult. 5 E. 3. cap. 2. 25 E. 3. cap. 1. & 15. 27 E. 3. cap. 1. 36 E. 3. cap. 2. And before in the Second part of the Institutes, in the exposition of the Statute of Artic. super Chartas, ca. 2. you shall finde in what case a Purveyor may be charged with felony, which felony may be reputed to these four Heads. First, if any that take upon him to be a Purveyor, or his deputy or servant, make purveyance of any thing above twelve pence without Warrant; Secondly, or make purveyance of any thing above twelve pence without testimony and appraisement of the Constable and four honest men, and without Delibery of Tales; Thirdly, or take any sheep with their wolls between Easter and Midsummer, and carry them to his own house and shear them; Fourthly, or make any takings or buyings, or take any carriage in other manner then is contained in their Commissions, they shall have punishment of life a member: and this Act remains still in force without alteration. The offenders may have the benefit of their Clergy.

By this Statute it is enacted that Purveyors assigned by Commission shall make purveyance of biggals, cows & other things, as well within Liberties and Franchises as without any grant, allowance or other thing to the contrary, or let thereof, notwithstanding: but the Purveyors shall observe the Statutes in them provided in every behalf, as by that Act appeareth. Upon this Act it was holden, that if the discharge of Purveyance were by Letters Patents, this Act makes it of no force: but if the discharge were by Statute, then the Purveyor is bound to observe the Statute, as by the Statute of 14 E. 3. cap. 1. pro Clero, Ecclesiastical persons are discharged by Statute, which the Purveyor is bound to observe. See the Statutes of 25 E. 3. Statut. 5. cap. 21. & 43 E. 3. cap. 3. in what manner and in what time the Kings Butler or his Lieutenant shall take Cellars, &c.

See more of Purveyors in the fourth part of the Institutes, Cap. of the Counting-house or Green cloth.

See Lib. 8. fo. 45. 46. in Evans Case, a Commission for taking up of boys for the Kings Chappel, the general words well expounded.

By an Act of Parliament not in print, it is enacted that no Purveyor arrested for any misdemeanour shall have any Writ by Seal, to cause such as arrested him to come before the Council to answer to the King, but have his remedy by the Common law.

Upon a grievous complaint made at the Parliament holden in the fourth year of our late Sovereign Lord King James, by the Commons of the Realm, concerning many grievances suffered by his subjects in the execution of a Commission granted to certain persons for getting of Salt-peter, his Majesties answer (amongst other things) was, that he had never an intention to make any application of his Prerogative therein further then might stand with the lawfull and necessary use thereof. And further his Majesty was pleased out of his gracious care and goodness to revoke and annull all Commissions or grants made to any person or persons for and concerning digging and working of Salt-peter, intending to consider of such a course afterwards, as the same might be made without any just cause of complaint, as by the said royall answer (amongst other things) more at large appeareth. In pursuance whereof, by the said Kings commandment, Popham Chief Justice, and all the Justices of England and Barons of the Exchequer, were assembled at Serjeants Anne in Fleet Street, in December, in the said fourth year, to resolve & certifye what

f Trin. 40 Eliz.
coram Rege. In a
Que Warrant. the
Lord Darcies case.

Rot. Parl. Anno
28 E. 3. nu. 34.

At a Parliament
holden 4 Jacobi
Regis.

Salt-peter, quasi
Sal petre, colligitur
aut ex materia quam
veteres muri, rupes &
saxa excludant, aut
ex terra saluginosa
& puta, quæ in
stabulis animalium
urinam ad multos annos
excepit, Latine Nitrum.

What Privilege the King had for digging and taking of Salt-peter in the houses, buildings or grounds of his Subjects; that thereupon a new Commission might be made accordingly: who upon often conferences and mature consideration, resolved as followeth.

First, where it was objected, that Gunpowder was invented in Germany, within time of memory, in the reign of King E. 3. so as the King could not claim it by prescription; and that before the 31 year of the reign of Queen Eliz. (which was the year after the Spanish Invasion) he, as yet, had not any Commission or Licence granted by any King or Queen of this Realm to any for the digging or taking of Salt-peter; and in the said 31 year of the said late Queen two Commissions or Licences were granted, the one particular, to George Constable Esquire, to dig, open and work during the space of eleven years for Salt-peter within the Counties of York, Nottingham, Lancaster, Northumberland, Cumberland, and the Bishoprick of Durham, as well within our own lands, grounds and possessions, as also within the lands, grounds and possessions of any of our loving Subjects within the Counties aforesaid; and the consideration of the Grant was, that he should deliver a great quantity of powder to be made by the said George Constable, and provided for the use of the Queens Majesty at a lower rate then was paid for it before, with this further clause, [And further our will and pleasure is, that the said George Constable shall at his own proper cost and charges erect, make up, and lay all mud walls, stables and grounds whatsoever to be digged up] whereupon it was inferred that no other buildings could be digged up by force of that Commission, but only Stables: the other Commission was general, made unto George Evelyn, Richard Hills and John Evelyn, and extended throughout the Realms of England and Ireland, and all other the dominions of the same, as well within our own proper lands, grounds and possessions, as also within the lands, grounds and possessions of any of our Subjects, with the like clause of the erection and reparation, as is aforesaid, without naming of Mansion-houses by express words, and without any prohibition to the Subject to dig for Salt-peter in their own buildings or grounds:

As to the first, it was resolved by all, that soasmuch as the taking of Salt-peter was for the necessary defence and safety of the Realm, that the King had a right of purveyance of it; and should not be driven to buy it in foreign parts, which foreign Princes might restrain, and so this Realm might want sufficient for the defence thereof, to the great perill and hazard of the same: but the King was to take it for the necessary defence of the Realm, according to the limitations hereafter expressed; and it is no prejudice to the owners of the soil, for the place that is digged must be made up again, and repaired in as good plight as it was before. Secondly, that this taking of Salt-peter in the buildings or grounds of the Subject, being a purveyance as is aforesaid, is inseparable to the Crown, and cannot be granted, demised, or transferred to any other, but ought to be taken only by the Kings Ministers, as other purveyances ought, and cannot be converted to any other use then for the defence and safety of the Realm, for which purpose only the law doth give to the King this prerogative: And it is not like to a mine of gold or silver in the ground of the Subject, for there the King hath an interest in those metals, and not purveyance only. And if the powder which is so made by the Kings Ministers begin to decay, as it will doe within two or three years, then this either ought to be changed for other, or sold, and the money thereof coming to be employed for powder for the defence of the Realm; and the Kings Ministers ought to make great provision of Salt-peter, for that will last a long time, and when

In the Accounts, &c. from the 21 of April 13 B. 3. for one year following Anno Domini 1344. under the title of Artificers and Workmen (inter alios) Gunners, and of their wages and stipends per diem, it is said (amongst others) Gunners, six pence. Latine, Bombarda, Tormenta, Sclopi.

Pach. 49 E. 3. Coram Rege Rot. 27. Oxon. Diversi malefactores veniunt ad Manerium, &c. cum Arcubus, Sagittis, Balistis & Goons.

Vide Rot. Parl. i R. 2. nu. 38. William Capitan of the Castle of Caerwick, being charged for delivering into the enemy, in the reign of E. 3. without Commission, answered (inter alia) that the enemies brought to battery thereof nine peeces des grosses Cannons.

Hollingsh. fo. 453.

Walsing. 10 R. 2. 1366.

Pol. Virgil. De Invent. rerum, fo. 2. cap. 11.

Pancirollus Nova reperta, Tit. 18. pag. 679. Anno Domini 1378.

John Moore: pag. 196. Anno Domini 1382.

Purveyance of Salt-peter. See the 1. part of the Institutes, Magna Charta cap. 21.

- need is to make thereof gun-powder, which will be made before the Baby can be put in readiness, &c. Thirdly, the Ministers of the King cannot in digging for Salt-peter undermine, weaken or impair any of the walls or foundations of any of the houses of the subject, be they Mansion-houses or Out-houses, as Barns, Stables, Dove-houses, Mills, or the like; neither can they dig the floor of any Mansion-house which serves for the habitation of man, because his Mansion is the safest place of refuge and safety of himself and his family, as well in sickness as in health, and his defence, as well in the night as in the day, against felons and misdoers; neither can the Kings Ministers dig the floor of any Barn of the subject employed for the safe keeping of Corn, Hay, &c. for the floor of a Barn cannot be made dry or serviceable again in a long time: but they may dig in the floors of Stables or Dr-houses, so that they leave sufficient room there for the horses and other beasts of the owner, and so that they repair the same again in convenient time as well as it was before. They may also dig in the floors of cellars and vaults, so that the wine, beer, or other necessary provision of the owner be not removed or in any sort impaired. And they may dig any mud walls which be not the walls of any Mansion-house, and in the ruins and decays of any houses which be not preserved for the necessary habitation of man.
4. Fourthly, they ought to make the places as well and commodious for the owner as they were before.
 5. Fifthly, they ought not to work in the possessions of the subject but between the rising of the Sun and the going down of the same, so as the owner may make fast the doors of his house, and put it in defence against misdoers.
 6. Sixthly, they ought not to place or fix any furnace, vessel or other necessities in any house or building of the subject without his consent, nor so near any Mansion as he by it may receive any prejudice or disquiet.
 7. Seventhly, they ought not to continue in one place above a convenient time, nor return thither but after a long time.
 8. Lastly, that the owner of the soil cannot be restrained from digging or taking of Salt-peter, for the property thereof is in the owner of the soil, and the King hath but the purveyance thereof, and that every man might work that would, and then there should be more plenty of powder, and at a cheaper rate. And these resolutions are agreeable with that Maxim, "That the Common law hath to admeasured the Prerogatives of the King, that they should neither take away nor prejudice the inheritance of any. And these Monopolies being Malum in se, and against the Common laws, are consequently against the Prerogative of the King; for the Prerogative of the King is given to him by the Common Law, and is part of the laws of the Realm. Which resolutions were delivered in writing by Popham Chief Justice unto the Kings Privy Council, as the unanimous resolution of all the Judges and Barons of the Exchequer, & were by his Majesties Privy Council well allowed of and approved, as Popham Chief Justice reported. Upon these resolutions these consequents do follow. First, if a man of his own Authority, or by colour of any Commission, Licence or Grant, doth take upon him to take any Salt-peter in the buildings or grounds of any other subject, to make thereof gunpowder, in any sort to his own use, albeit he covenanteth or agreeth to serve the King of so many lasts of powder; yet seeing it is but a purveyance, he cannot sell any powder thereof made to any of the Kings Subjects, or make any private benefit thereof: and if he do, he may be indicted of digging and taking of the Salt-peter at the Kings suit, and be grievously fined and imprisoned, for that it is a grand trespass with an high hand. Secondly, the party grieved may have his Action of trespass, and recover damages for the trespass, &c. according to the quality of the trespass.

*Pl. Com. 236.

*Stanf. Pl. Cor.

162. a.

Stanf. Prer. 5. b.

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Rot. Parl.

4 H. 4. nu. 111.

Eodem Anno 81.

9 H. 4. 15.

Rot. Parl. Anno

9 R. 2. nu. 31. not

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Complaints made against Purveyors in Parliament.

By the Statute of 9 R. 2. all Statutes made concerning Purveyors be confirmed, and to be put in execution, and that Justices of Peace have power to hear and determine their offences. See the fourth part of the Institutes cap. 2. Art. 33, 35, 36, against Cardinal Woolsey.

C. A. P. XXV.

Of Felony in wandring Souldiers and
Mariners.

ALL idle and wandring Souldiers or Mariners, or idle persons wandring as Souldiers or Mariners, shall be reputed felons, and suffer as in case of felony.

39 El. cap. 17.

1. So as not only he that is a Souldier or Mariner indeed, but he that is an idle wanderer, and takes upon him to be a Souldier or Mariner, though in truth he be none, is in danger of this law, for, as the preamble saith, they abuse the name of that honorable profession.

2. Every idle and wandring Souldier or Mariner, which coming from his Captain, from the seas, or from beyond the seas, shall not have a testimonial under the hand of some one Justice of Peace of or near the place where he landed, setting down therein the time and place when and where he landed, and the place of his dwelling and birth unto which he is to pass, and a convenient time therein limited for his passage, is by this Act adjudged a Felon.

3. If he hath such a testimonial, and shall exceed the time therein limited above fourteen days, he is by this Act a felon, unless he fall sick by the way, so as after his recovery he setteth himself in some lawful course of life, or resort to the place where he was born or was last abiding; but in both these two cases he must be a Souldier or Mariner indeed.

4. If any such idle and wandring Souldier or Mariner, or other idle person wandring as a Souldier or Mariner, shall forge or counterfeit such testimonial, he is by this Act a Felon.

5. If he shall have with him or them any such testimonial forged or counterfeited, knowing the same to be counterfeited or forged, he is also by this Act a Felon. And in both these last cases, as well he that is a Souldier or Mariner indeed, as he that is none, is in danger of this Act.

And the offender against any of the Articles of this Statute shall not have the benefit of his Clergy.

Justices of Assize, Justices of Gaole-delivery, and Justices of Peace, have power by this Act to hear and determine the said felonies.

But if some honest person valued in the last Subsidy to ten pounds in goods, or forty shillings in lands, or some honest freeholder, as by the said Justices shall be allowed, will be contented before such Justices to take him or them into his service for one whole year, and will become bound by recognizance, as the Statute doth appoint, then they shall not proceed any further against him, unless such person retained depart within the year without the licence of him that so retained him; and then he is to be indicted, tried and judged as a Felon; and not to have the benefit of his Clergy.

CAP. XXVI.

Of Felony in Souldiers that depart from their Captains without licence.

18 H. 6. cap. 19.
5 Eliz. cap. 5.
extendeth it to
Mariners and
Gunners.

* By the Statute of
5 R. 2. cap. 11.

See the Writ in
the Register 191.
directed to the
Serjeant at arms.

5 R. 2. cap. 10.
Rot. Parl. 5 H. 4.
nu. 29. the like
for keeping of
Castles and Forts.
Rot. Parl. 5 H. 4.
nu. 24; 25.

2 E. 6. cap. 2.
renewed 4 & 5 Ph.
& Mar. cap. 3.
1 Jac. cap. 25.
7 H. 7. cap. 1.
3 H. 8. cap. 5.

This Statute is become of little force or use: for the ancient manner of retaining of Souldiers whereunto that Act referreth, is utterly altered. For then Knights or Gentlemen expert in war, & of great revenues and libelhood in their Countrey, covenanted with the King to serve him in his war for such a time with such a number of men: and the Souldiers made their covenant with their Leaders as Masters, and then they were mustered before the Kings Commissioners, and entered of Records before them; and that was certified into the Exchequer; and thereupon they took their wages of the King, as it appeareth by many precedents of the Exchequer, and may be gathered by the preamble and body of the Act, and by the Register, where it appeareth, that a Writ was framed upon that Statute directed to a Serjeant at Arms ad capiend' conductos ad proficiend' in obsequium, &c. And this was thought an excellent Military policy, that the Souldiers, (part whereof were of their own tenants) should be chosen and led by Knights and Gentlemen of quality of their own Countrey, with whom they must fight in war, and live withall in peace when they returned into their countrey, in respect whereof the Souldier would the more chearfully and obediently follow his Leader, and the Leader would the more respectably and lovingly use his Souldier when he was abroad. Soe the ancient form of Commissions for arraying and mustering of men in 5 H. 4.

By this Act the benefit of Clergy was not taken away from the Delinquent. The Statute of 1 E. 6. cap. 2. extendeth only when the Souldier departs after that he hath served the King in his war. And such an offender shall not enjoy the benefit of his Clergy.

If any Souldier being no Captain, immediately retained with the King, which shall be in wages and retained, or take any prest to serve the King upon the sea, or upon the land beyond the sea, depart out of the Kings service without licence of his Captain, that such departing be taken, deemed and adjudged felony. And that all the Justices in every shire of England, where any such offenders be taken, have power to enquire of the said offences, and the same to heare and determine, as they do and may do of felony, &c. expressed in the Kings Commission to them made, as though the same offences were done in the same shire; and also that the departing of such Souldiers, and also their retainers, if it be traversed, be tried in the same shire where they be for such a cause arrested and arraigned.

Both these Acts of 7 H. 7. and 3 H. 8. are perpetual Acts, for this word [King] includeth all his succession.

¶ Without licence of his Captain.] The Statute of 3 H. 8. is without licence of the Kings Lieutenant there.

¶ That all the Justices in every shire of England, where any such offenders be taken, &c.] This Act of 7 H. 7. extends to all the Kings Justices in every shire, viz. Justices of Assise, Gaol-Delivery, Dier and Terminer, and of the Peace. And if the offender be taken in the County where

Hutton: 134:

Bo: 71 Souldiers ca:

Lib. 6 fo. 27. Caſe
de ſouldiers.
Dier 4 Eliz. 212.

where the Kings Bench sits, he may be indicted, &c. there: but this clause in 3 H. 8. is restrained to Justices of Peace. This clause in both the said Statutes is cumulative, and for more speed proceeding with the offender. But admit the offender be never taken, yet may he be indicted of felony in the County where the departure was; and if he appear not, he may be outlawed: for by the first clause the offence is made felony, and the second clause is affirmative, and not privative.

See Stanf. pl. cor.
fo. 168. c.

¶ He or they so offending shall not enjoy the benefit of his Clergy.] This branch in the Act of 7 H. 7. is general; but in the Act of 3 H. 8. there is an exception out of the like branch, viz. of men being within orders of holy Church. So as it differeth much whether he be indicted upon the one Statute or the other.

But observe what punishment the ancient law of England inflicted upon the Souldier that departed from the Kings Host both before, & since the Conquest.

Item qui fugiet a domino vel socio suo pro timiditate belli vel mortis, in conductione Heretochii sui in expeditione navali vel terrestri, perdat omne quod suum est, & suam ipsius vitam, & manus mittat dominus ad terram quam ei antea dederat. For the exposition of Heretochius and Hereslitz, see the Fourth part of the Institutes, cap. Coutre de Chivalry.

Lamb. Inter
Leges Edovardi
fo. 136.
Hoved. Aanal. 35.
Poena Hereslitz.

Now concerning Armour, Arms, Charges of Souldiers, & suffering of them, &c. see the Statutes in print of Confirmat. Chart. 25 E. 1. Ver. Magna Chart. 2 parte, fol. 35. 1 E. 3. cap. 5. 18 E. 3. cap. 7. 25 E. 3. cap. 8. 4 H. 4. cap. 13. 11 H. 7. cap. 7. and 3 H. 8. cap. 5. and 4 & 5 Ph. & Mar. cap. 3. for appearing at Puffers, &c. But 4 & 5 Ph. & Mar. cap. 2. an Act for having of Armour, Armour and weapon, is repealed by the Statute of 1 Jac. cap. 3.

Hntochius & Ductor
Ex. citat. 4 Just
127 a.

An Act not in print, Roc. Parl. Anno 5 H. 4. nu. 24, 25. for arraying and mustering of men, for watching of Beacons, &c.

Records of Parliament, 4 H. 4. nu. 48. 7 H. 4. nu. 124. 1 H. 5. nu. 17.

Book cases, 48 E. 3. 3, 4. 21 E. 4. 17. per Catesby. 9 E. 4. 26. lib. 7. fo. 78.

See the Second part of the Institutes, Confirmat. Chart. cap. 5. ubi supra.

Vide Pasch. 16 E. 2. Philip Master del Hospit. de S. Katherine case, in Libro meo fo. 83. b.

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CAP.

C A P. XXVII.

Of Felony to marry a second husband
or wife, the former husband or
wife living.

1 Jac. cap. 11.

IF any person or persons within his Majesties Dominions of England and Wales, being married, do at any time after marry any person or persons, the former husband or wife being alive, that then every such offence shall be felony, &c.

This is the first Statute of Parliament that was made against Polygamy. Polygamia est plarium simul virorum uxoremque connubium.

The difference between Bigamy or Trigamy, &c. and Polygamy is, Quia Bigamus seu Trigamus, &c. est qui diversis temporibus, & successive, duas seu tres, &c. uxores habuit; Polygamus, qui duas vel plures simul duxit uxores.

In any person.] *This Law is general, and extendeth to all persons of legal estate as before.*

If the man be above the age of fourteen, which is his age of consent, and the woman above the age of twelve, which is her age of consent, though they be within the age of one and twenty, they are within the danger of this law: hence it appeareth by this, that this Law extendeth not to a former marriage made within the age of consent, as hereafter shall appear.

Being married, &c.] *This extendeth to a marriage de facto, or voidable by reason of a precontract, or of consanguinity, or of affinity, or the like: for it is a marriage in judgement of law untill it be avoided, and therefore though neither marriage be de jure, yet they are within this Statute.*

Doe at any time marry.] *This second marriage is merely void, and yet it maketh the offender a felon.*

And the party and parties so offending shall receive such and the like proceeding, triall and execution, in such County where such person or persons shall be apprehended, as if the offence had been committed in such County where such person or persons shall be taken or apprehended.

See before the exposition of the Statutes of 7 H. 7. and 3 H. 8. concerning departing of Souldiers, &c.

Out of the generality of this law there be five exceptions. First, it extendeth not to any person or persons whose husband or wife be continually remaining beyond the seas by the space of seven years together. By this branch notice is not material, in respect of the Commorancy beyond sea.

Secondly, it extends not, when the husband or wife shall absent him or her self the one from the other by the space of seven years in any parts within his Majesties Dominions, the one of them not knowing the other to be living within that time. Here notice is material, in respect the Commorance is within the Realm.

Thirdly,

See 22 E. 4. Consultation 5. The opinion of the Doctors, Pains case, lib. 9. fo. 72.

See the 1. part of the Institutes, Sect. 104.

Thirdly, no2 to any person or persons that at the time of such marriage be divorced by any sentence had in the Ecclesiastical Court.

There be two kinds of divorces: the one that dissolveth the marriage à vinculo matrimonii; as for precontract, consanguinity, &c. and the other à mensa & thoro; as for adultery, because that divorce by reason of adultery cannot dissolve the marriage à vinculo matrimonii, for that the offence is after the just and lawful marriage. This branch in respect of the generality of the words doth privilege the offender from being a felon as well in the case of the divorce à mensa & thoro, as where it is à vinculo matrimonii, and yet in the case of the divorce à mensa & thoro, the second marriage is void, living the former wife or husband. And if there be a divorce à vinculo matrimonii, and the adverse party appeal, which is a continuance of the former marriage, and suspend the sentence, yet after such a divorce the party marrying is no felon within this statute, in respect of the generality of this branch, although the marriage be not lawful.

Fourthly, no2 to any person or persons where the former marriage is by sentence in the Ecclesiastical Court declared to be void and of no effect.

Fifthly, no2 to any person or persons, for or by reason of any former marriage made within age of consent. Whereby it appeareth that the makers of the law intended that this Act should extend to every person above the age of consent.

If the man be above fourteen and the wife under twelve, or if the wife be above twelve and the man under fourteen, yet may the husband or wife so above the age of consent disagree to the espousals, as well as the party that is under the age of consent; for the advantage of disagreement must be reciprocal. And so it was resolved by the Judges and Clergymen, Trin. 4th Eliz. in the Kings Bench, in a writ of Error between Babington and Warner. So as if either party be within age of consent, it is no former marriage within this Act.

Trin. 4th Eliz.
Coram reg.
Inter Babington
& Warner.

The offender against this Statute may have the benefit of his Clergy.

If he be a Nobleman and Lord of Parliament he shall be tried by his Peers, albeit there be no prohibition special for it: for of common right, (that we may say it once for all) in case of treason, felony, and misprision of treason or of felony (as hath been said before) he is to be tried by his Peers.

I find that by the ancient law of England, if any Christian man did marry with a woman that was a Jew, or a Christian woman did marry with a Jew, it was felony, and the party so offending should be burnt alive.

Marriage in some
sort felony by the
Common law,

Contrahentes cum Judæis, Judæabus, Pecorantes, & Sodomites in terra vivi condiciantur, &c. Fleta, lib. 7. cap. 35. §. Contrahentes.

C A P. XXVIII.

Of Felony for any that having a Plague-sore upon him, contrary to commandment goeth abroad, &c.

1 Jac. cap. 31.

If any person infected with the plague, commanded (by such persons as are appointed by the Act) to keep house, shall contrary to such commandment wilfully and contemptuously goe abroad, and shall converse in company, having any infectious sore upon him uncured, such person shall be adjudged a felon.

Levit. cap. 13.
Numb. cap. 5.
Regist. F. N. B.
234. Breve de Le-
proso amoveado,
Bract. lib. 5.
f. 421. a.
Brit. fo. 39. 88.
Fleta. li. 6. ca. 39.
22 E. 3. Rot.
Clauf. 2 parte
nu. 14.

This is felony, albeit no other person by such means be infected; for this Statute was made to prevent the most horrid and fearfull infection of the plague. The law was general, and extended to all states and degrees whatsoever, and was grounded upon the law of God: and the reason of the law of the Realm is, that the infectious sick should be removed from the whole. The party offending might have had the benefit of his Clergy.

Here is a rare Proviso, That no attainder of felony by virtue of this Act shall extend to any attainder, or corruption of blood, or forfeiture of goods, chattels, lands, tenements or hereditaments.

In this Proviso these things are to be observed. First, that by the avoiding of the corruption of blood the wives power is impliedly saved: for where the heir shall inherit, the wife shall be endowed against the heir. Secondly, that there shall be no forfeiture of goods or chattels; which is rare, and the like we have not observed before; and by consequent the offender may make his Will and Testament, and if he doe not, the Ordinary ought to grant administration of the goods and chattels, as he ought to doe in other cases.

These words [any attainder or] must be omitted, and the sense be, to any corruption of blood; for as it is printed, it is, that no attainder of felony shall extend to any attainder, &c.

This Act is become of no force for want of continuance, and is expired since we wrote this Chapter, therefore to be put out of the charge of the Justices of Peace.

* Nota.

CAP. XXIX.

Of Felony in Jaylers by dures of Imprisonment, &c. by Statute and by the Common law.

IF it happen that the keeper of the prison, or under-keeper, by too great dures of imprisonment and by pain, make any prisoner that he hath in his ward to become an * Appellor against his will, and thereof be attained, he shall have judgement of life and member.

Before the making of this Statute, if a Jayler had by dures of imprisonment made his prisoner become an Approver, to appeal honest men for his own private, of intent to have of their goods when they were committed to his custody, and to retain them in prison without being let to mainprise, and the Appelles upon his appeal be hanged; this is felony in the Jayler by the Common law: but if the Appelles were acquitted, then it was no felony, but a great misprision in the Jayler, which was one of the causes of the making of this Act: for by this Act, if the prisoner become an Approver against his will, whether the Appelles be acquitted, or attained, or after the approbement not proceeded with, and whether the approbement be true or false, so it be by dures of imprisonment and against the will of the prisoner, it is felony. * For it is not lawful for any man to ercite or stir any other to a just accusation, complaint or lawfull suit, for Culpa est se immiscere rei ad se non pertinenti; (and so was it resolved Mich. 7 Jac. in the Star-chamber, in Sir John Hollis his case, by the whole Court) much more to doe it by dures of imprisonment, most of all by a Jayler, who hath the custody of the prisoner committed to him, to enforce him by dures to become an Approver. And therefore this law hath made it felony in the Jayler or Under-jayler.

¶ **Keeper of the prison, or Under-keeper.]** If he be Keeper or Under-keeper, de jure or de facto, by right or by wrong, he is within the Purview of this Statute.

¶ **By too great dures of imprisonment.]** Every imprisonment is taken and deemed in Law duritia, dures: a little addition to it by the Jayler is too great dures in this case.

¶ **To become an Appellor.]** That is, an Approver.

¶ **Against his will.]** That is, when the prisoner never would have done it of his own will, if the Jayler or Under-jayler had not enforced him thereunto.

¶ **Judgement of life or member.]** * These words do imply felony. For this offence the offender shall have the benefit of his Clergy.

b If the Jayler keep the prisoner more dreightly then he ought of right, whereof the prisoner dieth, this is felony in the Jayler by the Common law. And this is the cause, (as before hath been said) that if a prisoner die in prison, the Coroner ought to sit upon him. See before Cap. Petit Treason, fo. 34. how prisoners are to be demeaned.

14 E. 3. cap. 10.
Geol in French is
a prison. Geolier,
a keeper of a prison.
Anglice, a
Jayl, or Jayler.
* An Approver.
3 E. 3. Cor. 297.

18 E. 3. Cor. 272.

* 1 E. 3. cap. 14.
20 E. 3. cap. 5.
1 R. 2. cap. 4.
W. 1. cap. 36.
11 H. 4. 2. 91.
22 E. 3. 15.
See the exposition
of W. 1. c. 28.
a Mich. 7 Jacobi
in Curia Stellar.
Sir John Hollis
case.
11 H. 4. 73. simile.
13 E. 3. bar. 253.
simile.

* W. 2. cap. 34.
28 E. 3. cap. 3.
13 R. 2. stat. 2.
cap. 3.
1 E. 3. De frang.
prisonam.
9 E. 4. fo. 26.
Br. Cor. 203.
b Britton fo. 18.
Fleta lib. 1. c. 26.
versus finem.
Mirror cap. 1.
§. 9. De homicidio.

How

14 E. 3. cap. 10.
19 H. 7. cap. 10;
Lib. 4. fo. 34.
Muttons case.
Parl. 18 E. 3.
nu. 43. 2 Car. Regis, in the Exchequer Chamber, Fortescues case.

How Gaules are rejoined and united to the office of Sheriffs, for this Statute of 14 E. 3. cap. 10. 19 H. 7. cap. 10. Lib. 4. fo. 34. Muttons case. Adde therunto Rot. Parl. 18 E. 3. nu. 43. and so was it decreed in Fortescues case, in the Exchequer chamber, Anno 2 Caroli Regis.

CAP. XXX.

Of Felony by bringing in, payment or receipt of certain money.

3 H. 5. cap. 1.
Stat. 1. Rast.
Abb. Tit. money,
nu. 27.

IT is felony to make, coin, buy, or bring in and put in payment, &c. any Galley half-pence, Suskyn or Dotkyn.

9 H. 5. c. 6. Stat. 2.

The reason of this law was, for that these moneys were base, and not of the Allay of Sterling, which was (amongst others) the cause of the making of the general law of 5 H. 5. cap. 6. Stat. 2.

2 H. 6. cap. 9.

It is felony to pay or receive for payment any money called Blanks. For the better understanding of this Statute, it is to be known, that these Blanks were white money coined by King H. 5. in France after his victory at Agincourt, and league with France, whose style then was, Rex Anglia, Regens & haeres Francie. And they were called Blanks or whites in respect of the colour, because at the same time he coined also a Salus in gold: the Salus being of the value of twenty two shillings, was of the allay of Sterling; but the Blanks, which were much more common, being each of them valued at eight pence, were not of the allay of Sterling, and therefore they only were decreed by the said Act of 2 H. 6.

See the Second part of the Institutes, Artic. super Chartas, cap. 20.

For either of these offences of felony the offender may have his Clergy.

CAP. XXXI.

Of Felony for transportation of Silver, or importation of false or evil money, &c.

Mirror c. 1. §. 3.
Inter les Articles
de viciis roys or
deins.
Rot. Parl. 17 E. 3.
nu. 15. not printed.

DEsendue fuit que nul Argent serra transport hors del Realm.

This was the ancient law of England long before the Conquest.

At the Parliament holden Anno 17 E. 3. as well the transportation of Silver, as the importation of false and evil money, is enacted by authority of that Parliament to be felony. And also if the searchers mentioned in the Act be assenting to the bringing in of false money, or willingly suffer Silver or money to be transported, it is also made felony. But because this Act was never printed nor translated into English, and for that there be other things observable enacted thereby, worthy to be known, we will transcribe the same de verbo in verbum in proprio Idiomate.

Le Parliament tenu a Westm. a la Quinzeme de Pasch.
du raign nostre Seignior Le Roy Edward Tiers apres
le Conquest Dis & septisme.

Item accorde est de faire une Monoie des bones Esterlings en Engle-
terre du Pois & del^a Alay del auncient Esterling, que avera son
cours en Engleterre entre les Grandz & la Commune de la terre, & la
quele ne serra portes hors du royaume dengleterre en nulle manere, ne pur
quecunque cause que ceo soit. Et en case que les Flemings voillent faire
bone monoie d'argent, grosses ou autres, accordant en alay es bones ester-
lings, que tiel monoie ait cours en Engleterre entre Merchand & Mer-
chand & autres qui la voidroient rescivre de leur bone gree, isint que nul
argent soit portes hors due Roialme.

Item est accorde & assentus, que bones gents & loialx soient as-
signes es Ports de miere, & ailleurs, ou miester serra, de faire la serche
que nul argent soit portes hors due Roialme en monoie n'autrement, fors-
pris que les Grandz quant ils vont per dela qils pensent aver vesseals
d'argent pur servir leur hostels: Et que nul soit cy hardy^b de porter fausse
& malvois monoie en Roialme, sur paine de forfeiture de vie & de
membre, & a faire eschanger a ceux qui passeront la miere d'or pur leur
bones Esterlings a la value.

Item assentus est & accorde, que les dits Sercheours, per cause qils
ferront leur offices plus diliement & plus loialment, ils eient la tierce
partie de totela fauxe monoie qils purront trover portee deins le Roialm
a leur profit demeen: Et en mesme la manere eient la tierce partie de
la bone monoie quele ilz troveront en la miere passent hors de la terre. Et
en case qils soient troves negligents ou rebealx a tieux serches faire, a que
leur terres & tenements, biens & chateux soient seises en la main le Roy,
& leur corps pris, & detenus tanque ilz rient fait fine au Roy pur leur
disobeissance. Et en case qils soient assentants de porter tiels fauxe mo-
noie, & de suffire s. chantement l'argent ou monoie autrement, (forspris
ques les Grandz quant ils vont per dela qils pensent aver vesseals dar-
gent pur servir leur hostels come desuis est diu) estre mesmes hors du
Roialm, eient judgement de vie & de membre.

Item, It is accorded to make money of good Sterling in England of
the Weight and Allay of the ancient Sterling, which shall be
currant in England between the Great men and Commons of the Land,
and the which shall not be carried out of the Realm of England in any
manner, nor for any cause whatsoever. And in case that the Fle-
mings will make good money of silver, grosse or other, according in
allay

^a See Britton c. 4.
fo. 10. b.
Cest alay est so-
lonque le forme
& uiaage del
Realm.

Mirror cap. 1. §. 3.
before the Con-
quest,

& cap. 1. §. 6.

& cap. 5. §. 1.

See inter leges

Æthelstani c. 14.

Canuti cap. 8.

Fleta lib. 1. c. 22.

Glanv. li. 14. c. 7.

Of what weight

and allay the

Kings money

shall be.

25 E. 3. cap. 13.

9 H. 5. ca. 11.

See before cap.

Treason, Verb.

54 money.

See the second

part of the Insti-

tutes, Artic. Super

Chartas cap. 10.

^b This is felony.

See the like in

the second part of

the Institutes,

1 E. 2. De frangen-

tibus prisonam.

14 E. 3. 10, &c.

^c The reward of

the Searchers if

they be diligent,

&c.

^d The punishment

of them if they be

negligent, &c.

^e Their assent to

the bringing in of

false money, or

wittingly to suffer

silver, or money,

&c. to be trans-

ported, is Felony.

allay of good sterling, that such money shall be currant in England between Merchant and Merchant, and others who of their own accord will receive the same, so that no silver be carried out of the Realm.

Item, It is accorded and assented, That good and lawfull men be assigned in the Ports of the Sea and elsewhere, where need shall be, to make search, that no silver be carried out of the Realm in money or otherwise, (except that the Great men may, when they go out of the Realm, have silver vessels to serve their houses.) And that none be so hardy to bring false and ill money into the Realm, upon pain of forfeiture of life and member, and to make exchanges with them that shall passe the Sea, of gold for their good sterling to the value.

Item, It is assented and accorded, That the said Searchers, because they may do their offices more diligently and more lawfully, shall have the third part of all the false money that they can finde to be brought into the Realm, for their own benefit; and in the same manner they shall have the third part of the good money which they shall finde upon the Sea passing out of the Realm. And in case they shall be found negligent or disobedient in making such searches, that their lands and tenements, goods and chattels shall be seized into the Kings hands, and their bodies taken and detained untill they have made fine to the King for their disobedience. And in case they shall be assenting to the bringing in of such false money, or wittingly shall suffer silver or money (except vessels of silver for the Great men when they go out of the Kingdome, to serve in their houses, as before is said) to be transported out of the Realm, they shall have Judgement of life and member.

The offenders in case of felony made by this Act may have the benefit of their Clergy.

CAP.

CAP. XXXII.

Of Felony for carrying of Wooll, Woolfels,
Leather or Lead out of the Realm.

NO Merchant, English, Welsh, or Irish, shall carry any manner of Woolls, Leather, Woolfels, or Lead, out of the said Realm and Lands, upon pain of forfeiture of life and member, nor shall transport any of the said Wares or Merchandizes in the name of Merchant-strangers, nor shall send or hold their servants, &c. in the parts beyond the sea to survey the sale of the said wares or merchandizes, or to receive the money coming of the sale of the same, nor take payment of gold or silver, nor of any other thing in recompence or commutation, or in the name of payment, in the parts beyond the sea out of the Realm and lands abovesaid, of merchandizes sold in England, Ireland or Wales, touching the Staple, but that all such payment shall be made in gold or silver, or Merchandizes in England, Ireland or Wales, where the contract was made, upon pain of life and member.

27 E. 3. cap. 3. the statute of the Staple.

Mirror cap. 1. §. 3. Inter les artic. per vieles royes ordeins.

Defendu que nul ne amesnaist leyne hors del realm.

That no Merchant privy nor stranger, nor any other of what condition that he be, go by land or by water towards wines, or other wares or merchandizes coming into our said Realm or Lands, in the Sea, nor elsewhere, to forestall or buy the same, or in other manner to give earnest upon them, before that they come to the Staple, or to the Port where they shall be discharged; nor enter into the ships for such cause, till the merchandizes be set to land to be sold, upon pain of loss of life and member.

Cap. 11.

No Merchant privy, stranger or other, shall carry out of our Realm of England, Woolls, Leather, or Woolfels, to Barwick upon Twede, nor elsewhere, nor into Scotland, upon the like pain; nor that any Merchant nor any other sell his Woolls, Woolfels, or Leather, to any of Scotland, nor to any other to carry into Scotland, upon the like pain.

Cap. 12.

If the Merchants or other people of Ireland or Wales, after they be in the sea with their merchandizes, do pass to any place, other then to the Staples in England; it is felony.

Cap. 18.

No Merchant or other shall make any conspiracy, confederacy, &c. or ill device in any point, that may turn to the impeachment, disturbance, defeating or decay of the Staples, &c. and if any doe, and be thereof attainted before the Maior and Ministers of the Staple, or other whom the King shall assign, he shall incur the pain of loss of life and member.

Cap. 25.

Item, ou autre soitz suit orden en * lestatutes de Lestaple que nul Englois passera la mere ove leynes; quire, pealtz lanus, ne per auter, sur peine de forfeiture de vie & member, terres & tenements, biens & chateaux: Est accord que la forfeiture de vie & member soit ouste de tout en lestatute de

38 E. 3. cap. 6.
27 E. 3. cap. 3; &c.
stat. Stapulz.

Lestaple, & que nul home soit impeach per tiel forfeiture de vie & membre, cubien in temps passe come avenir, la forfeiture des terres & tenements, biens & chateaux esteant en sa force. The same in English.

Also where heretofore it was ordained in the statutes of the Staple, that no Englishman should pass the Sea with Woolls, Leather, Woolfels, nor by other, upon pain of forfeiture of life and member, lands and tenements, goods and chattels; It is accorded that the forfeiture of life and member be ousted in the whole in the statute of the Staple, and that no man be impeached by such forfeiture of life and member, as well in times past as to come, the forfeiture of the lands and tenements, goods and chattels, being in his force.

By the express letter of the body of this Law the forfeiture of life and member is ousted de tout in the Statute: therefore it is holden that the felony is taken away throughout the Statute, but the forfeiture of lands and goods remaineth by the express letter of this Act.

By the Statute of 18 H. 6. No man shall carry Wooll, or Woolfels, out of this Realm to other places, then to the Staple at Callice, without the Kings license, upon pain of felony, &c. And that as well Commissioners assigned, as the Justices in every Country where such Woolls and Woolfels shall be so carried out, have power and authority to enquire of the premises, and them to hear and determine, &c.

But this Act extendeth not to Woolls which pass the Streight of Marroke. And this is a perpetual law, and cannot be expired, as it is supposed in the last impression of the Statutes at large, but it extendeth only to Woolls and Woolfels. The offender herein may have his Clergy.

And for the better understanding of ancient Statutes and Records concerning Woolls, it is necessary to explain certain words and terms. By the Statute of 25 E. 3. cap. 9. a Sack of Wooll contains but twenty six stone, and every stone fourteen pound, where before it was a twenty eight stone.

Pochet of Wooll, unde Pochetum, that is, a little poke or sack containing half a sack of Wooll. Sarpler, unde Sarpleia, is also half a sack, and is derived from the French word Sarpiller, which signifieth a Wrapper, within which wrapper half a sack is contained.

A Weigh of Wooll, unde Waga, is half a sack.

A Tood or Loit of Wooll, unde Toodum lanx, containeth two stone, and is derived from the French word Toiler, which is a Wrapper, within which by usage two stone of Wooll is folded: some fetch it from the Flemish word Dodderem, which signifieth nedere, to weave, because it is woven into cloth. Petralanx is a Stone of Wooll, so called, because the weight, being a Stone, contains fourteen pound.

^a Compos. de ponderibus vet. Mag. Charta, 2 part. fo. 31. Saccus lanx. Rot. Parl. 27 E. 3. nu. 53.
^b Compos. de ponderibus, ubi supra.

CAP. XXXIII.

Against transportation of Iron, Brasse, Copper, Latten, Bell-metall, Pan-metall, Gun-metall or Shrooffe-metall, (Tinne and Lead only excepted.)

THE transportation of these are prohibited by divers Acts of Parliament upon the penalties therein expressed. And hereby is prohibited the transportation of any Gunnes whatsoever: a necessary law, and worthy of due execution.

And we have observed that God hath blessed this Realm with things for the defence of the same, and maintenance of trade and traffick, that no other part of the Christian world hath the like. viz. Iron to make Gunnes, &c. more serviceable and perdurable then any other. Secondly, Timber for the making and repairing of our Navy, and especially for the knees of the ships, better then any other. Thirdly, * our Fullers-earth is better for the fulling of our cloth then any other. Fourthly, our wooll makes better cloth, & more lasting and defensible against winde and weather, then the wooll in any Nation out of the Kings Dominions, and many other special gifts of God.

But here will we stay, and pray that none of these may be transported, for many inconveniences that will follow thereupon.

28 E. 3. cap. 5.
33 H. 8. cap. 7.
2 E. 6. cap. 37.
See the penalties in the Statutes themselves, which are thought to be too weak.
Ferru à feriendo.
Timber is a Saxon word, in old French Marem, unde Maremium.
Latine, Ligni materia, vel Lignum edificatorium.

* Terra fullonica.

CAP. XXXIV.

Of Felony for stealing a Falcon.

EVERY person that findeth any Falcon, Tercelet, Lanner or Laneret, or any other Falcon that is lost of his Lords, that forthwith he shall bring it to the Sherif of the County, and that the Sherif make proclamation, &c. and if any steal any Hawk and the same carry away, not doing the Ordinance aforesaid, it shall be done of him as of a thief that stealeth a horse or other thing.

37 E. 3. cap. 19.

The Statute of 34 E. 3. inflicted the penalty for the concealing and taking away of the Hawk, two years imprisonment; and the price of the Hawk to the Lord, if he hath wherewith, and if not, he shall the longer abide in Prison. This Act of 37 E. 3. maketh the offence felony.

34 E. 3. cap. 22.

The new printed book of the Statutes at large, in stead of these words; (or any other Falcon) hath, or any other Hawk.

Printed for the Society of Stationers, 1618.

I have seen some manuscripts, in these words, in the original tongue, where in the Statute was published; Que quecunque person que trove Faucon, Tercelet, Lanier, ou Laneret, Aultor ou auter Faucon. And both these differ from the truth of this Law: For the first extendeth this Act to any Hawk whatsoever; and the manuscript to Aultor or Aultor, a Goshawk: whereas in truth, this law extendeth only to such as be of the kinde of Falcons, being long winged Hawks, which many times by flying far off are lost, and not to any short.

See hereafter, cap. Larceny, verb. Personal goods, &c.

Lib. 8. fo. 17. 28.
In casu Principis.

Short-winged Hawk, as the Goshawk, the Tercel of the Goshawk, the Sparhawk, &c. And in the body of the Act this word [Falcon] is ever used, and not this word [Hawk], as hereafter appeareth. We would have been glad to have cleared this point by the Record of the Parliament Roll, but the Roll of this Act is not to be found, and yet being a general law, the Judges are to take notice thereof: and that which I have set down as the words of the law agreeth with the first impression thereof, and with all succeeding impressions saving the last.

¶ Every person.] This is a general law, and extendeth to all persons of what degree or sex soever.

¶ That findeth.] Note, by the Common law the felonious taking of any Hawk, long-winged or short-winged, from the Beak, &c. or from the person of any man, with a mind to steal her, is robbery: but the finding of a Falcon, though he concealed, denied, or sold her, was no felony but by this Act.

¶ Any Falcon.] By this and the last words, or any other Falcon, it appeareth that only Falcons are within this law, as besides those that are here named, the Gersfalcon, Gersfalcon or Ardearius, & the Tercel, which is called a Jerkin; and the Lanner is called Falcunculus. But the Merlin, which is called Esalo, and the Hobby, which is called Alaudaria, though they be long-winged Hawks, yet being not of the kind of Falcons they are not within this Statute, neither is any short-winged Hawk, as the Goshawk, the Tercel of the Goshawk, or the Sparhawk, &c. as hath been said, within this Act.

¶ Terceler.] This is the Tercel of the Falcon, called a Tercel gentil, the male of the Falcon, called Terciulus, quia tertia parte minor sit femella, because the Tercel is a third part less then the female.

¶ Lanner and Lanneret.] These, as hath been said, are of the kind of Falcons, which appeareth not only by the name Falcunculus, but by the words of the Act, for having named the Lanner and Lanneret, it is said, or any other Falcon.

Albeit these Hawks that shall be so lost have no Werbels, yet must the finder carry them to the Sheriff, for Werbels are not required by this Act. The only thing that the finder is to doe to save himself from felony, is forthwith (the word in the original is mainenanc) after his finding to carry the Hawk to the Sheriff.

¶ That is lost of his Lords.] Lords are taken here for the owners: the word in the original is Seigneur, which signifieth as well a Proprietary as a Lord.

¶ To prove reasonably.] This is not intended according to the general sense of this word [proof] that is, by a Jury of twelve men, but [reasonably,] that is, by Werbels, or by marks, or by other proof to the Sheriff.

¶ And if any steal any Hawk, &c.] The concealing and carrying away of the Hawk, not bringing the same to the Sheriff according to this Ordinance, is adjudged a stealing by this Act. And yet if a man find goods, and conceal or deny them, it is no felony.

¶ As of a thief that stealeth a horse.] But yet by the Common law one hath not as good and absolute a property in Hawks, being fera natura, and reclaimed for delight and pleasure, (for they may become wild again, and return to their natural liberty) as in a horse, or any other thing of profit: but the concealing and carrying away of the Hawk reclaimed, being found

10 E. 4. 1.
7 R. 2. barre 241.
Lib. 5. fo. 108.
Sir Hen. Constables case.

14 El. Dier 307.
Fines case.
Lib. 7. fo. 17.
in case de Swans.

found was no felony before this statute, no more then any thing of profit, because the party came to the Hawk by finding. See more hereof in the Chapter of Larceny. A Hawk that is not reclaimed is nullius in bonis, but occupanti conceditur, and he that first getteth the Hawk enjoyeth it.

In this Act four things are to be observed. First, that the Sheriff must make proclamation in all the good towns of the County, that he hath such a Falcon in keeping. Secondly, if none come to challenge the Falcon within four months, if the finder be under the degree of a Gentleman (which here is called un simple home) the Sheriff shall have the Falcon, paying reasonable costs, &c. Thirdly, if the finder be a Gentleman, & no challenge by the owner within four months, then he shall have the Falcon, paying reasonable costs, &c. Fourthly, it is to be observed, that in these two latter branches, the last printed book hath this word [Hawk:] but in the original, and all the other printed books, the word is [Falcon:] under which word all the rest mentioned in this Act are included. For this offence of felony the offender shall have the benefit of his Clergy, for at the time of the making of this Act he that had slain a horse should have had his Clergy. See Stat. Pl. Coron. fo. 37.

* Who shall be accounted in law a Gentleman, See the second part of the Institutes, the statute of Additions 1 H. 5. c. 5. See before c. 23. 3 Jac. ca. 4. Ver. And that if any Gent,

C. A. P. XXXV.

Congregations, &c. by Masons in their
generall Chapters, &c.

It is ordained and established, that no congregations and confederacies shall be made by Masons in their generall Chapters and assemblies, whereby the good course and effects of the statutes of Labourers are violated and broken in subversion of Law, and if any be, they that cause such Chapters and Congregations to be assembled and holden, shall be adjudged felons.

3 H. 6. ca. 13

The cause wherefore this offence was made felony, is, for that the good course and effect of the statutes of Labourers were thereby violated and broken. Now all the statutes concerning Labourers before this Act, and whereunto this Act doth refer, are repealed by the Statute of 5 Eliz. cap. 4. whereby the cause and end of the making of this Act is taken away, & consequently this Act is become of no force or effect: for cessante ratione legis, cessat ipsa lex. And the Indictment of felony upon this statute must contain, that those Chapters and Congregations were to the violating and breaking of the good course and effect of those statutes of Labourers, which now cannot be so alleged, because those statutes be repealed. Wherefore this would be put out of the charge of Justices of Peace written by * Basset Lambard.

23 E. 3. De servitibus ca. 1. &c.
25 E. 3. De servitibus, c. 1. &c.
5 El. cap. 4.

Cessante causa seu ratione legis, cessat ipsa lex.
14 H. 7. 11.
Per Fines finit-
le 27 H. 8. 4. b.
Stat. 37. b.

Aide: Stat. 10 E. 3. c. Account per Shard. 16 H. 6. Examination 14. * Lambard pag. 227. Vide

C A P. XXXVI.

Of Felony by bringing in of Bulls of Excommunication, &c.

13 R. 2. Stat. 2.
cap. 3.

IF any man bring or send into this Realm, or the Kings power, any Summons, Sentence, or Excommunication against any person of what condition that he be, for the cause of making motion, assent, or execution of the statute of Provisors, he shall be taken, arrested and put in Prison, and forfeit all his Lands and Tenements, goods and chattells for ever, and incur the pain of life and member, And if any Prelate make execution of such Summons, Sentence or Excommunication, that his Temporalties be taken, and abide in the Kings hand, till due redresse and correction be thereof made. And if any person of lesse estate then a Prelate, &c. make such execution, he shall be taken, arrested and put in prison, and have imprisonment, and make fine and ransome at the discretion of the Kings Councell.

Regist. fo. 61. b.

Ibidem 60. b.
Ibid. 61. b. & 62.

By the Common law, when any person, either Ecclesiasticall or Temporal, should by pretext of feodal power impugne or attempt to frustrate any of the lawes of the Realm, there lieth a Writ called *Ad iura regia*. If it were by an Ecclesiasticall person beneficed within this Realm, then the Writ is,

Rex, &c. S. iuram. Turbamur, nec immerito, & movemur, dum illos qui sub nostro degunt dominio, & ibidem beneficiis & redditibus honorantur, quo pre-textu in defensione & tuitione iurum Regis Contra nos ipsos nos assistere con-deceret, eadem iura erectis contra nos cervicibus conspicimus facientes pro viribus impugnare, &c.

The generall Writ is, Rex, &c. *Ad iura Coronæ nostræ integræ & illas pro viribus conservandas, eo amplius curam & operam adhibere nos convenit studio-sum, quod ad hoc ex debito attringimur, vinculo iuramenti, & alios conspicimus ad ipsorum iurum enervationem anhelare, et particulatly against Provisions. So as Provisions, &c. were, as by these Writs it appeareth, against the Common law of the Realm: but sufficient punishment was not thereby inflicted: therefore this and other Statutes were made*

And here it is worthy of consideration, how the lawes of England are not derived from any feodal law, either Canon, Civil or other, but a speciall law appropriated to this Kingdom, and most accommodate and apt for the good government thereof, under which it hath wonderfully flourished, when this law hath been put in due execution: & therefore as by situation, so by law it is truly said,

Et penitus toto *diviso orbe Britannos.

*Divi-2 orbe &
fos S legibus.

¶ If any man.] Though these words be generall, yet they extend not to Ecclesiasticall persons, because there is speciall provision for them after in the Act.

¶ Any Summons, Sentence, or Excommunication.] Hereby are prohibited the Popes Bulls of any sentence or excommunication, &c. and proces of Summons.

It appeareth by our Books that the bringing of any Bull of Excommunication into the Realm against a subject, was against the Common Law of England, in respect it gave way to forain authority. And so it was holden in the time of E. 1. and E. 3. &c. long before this Act, and ever since.

¶ Or execution of the said statute of Provisors.] Viz. 25 E. 3. de Provisoribus. See 25 E. 3. cap. 22. 27 E. 3. cap. 1. 38 E. 3. stat. 1. cap. 1, & 4.

¶ Incurre the pain of life and member.] That is, of felony, as hath been often said before. This punishment is altered by the statute of 13 Eliz. cap. 2. as hereafter in this Chapter shall appear.

¶ And if any Prelate make execution, &c.] This and the next following branch extend to Ecclesiasticall persons. The punishment in both these branches, and in the former also, is altered by the statute of 13 Eliz. cap. 2. For thereby this offence is made High Treason, as well in persons Ecclesiasticall as temporall: which Act, and the cause of the making thereof, you may read in the case *De jure Regis Ecclesiastico, ubi supra.*

11 E. 3. Certif. 6.
30 Aff. p. 3.
19 E. 3. Quar-
non admittit. 7.
Brook. Premu-
nre 10.
11 H. 4. 69. 76.
14 H. 4. 14.
7 E. 4. 14.
20 H. 6. 1.
35 H. 6. 42.
F. N. B. 64. f.
Lib. 5. fo. 12.
in *Causes case*.
4 W. 2. cap. 24.
1 E. 2. de Frang.
prisonam.
28 E. 3. cap. 3.
13 R. 2. sta. 2. c. 3.
9 E. 4. 26.
Br. cor. 203.
b Lib. 5. fo. 35.
36, &c. *De jure*
Regis Ecclef.

CAP. XXXVII.

Of Felony in receiving a Jesuite, Seminary Priest, &c.

Every person which shall wittingly and willingly receive, relieve, comfort, or maintain any Jesuite, Seminary Priest, or other Priest, Deacon, or Religious, or Ecclesiasticall person (made by authority from the See of Rome since the Feast of Saint John Baptist, An. 1 Eliz. born within this Realm) being at liberty and out of hold, knowing him to be a Jesuite, &c. shall for such offence be adjudged a felon without benefit of Clergy.

27 Eliz. cap. 2.

The cause of the making of this statute of 27 Eliz. against Jesuits and Seminary Priests, &c. and their receivers, you may read at large, Lib. 5. fol. 38, 39. in the case *De jure Regis Ecclesiastico.*

Clergy taken
away.

CAP. XXXVIII.

Of Felony in Recusants concerning
Abjuration.

31 Eliz. cap. 1.

IF any Recusant (other then a Popish Recusant or a Feme Covert) which by the tenor and intent of this Act is to be abjured, shall refuse to make abjuration, or after such abjuration made shall not go to such haven, and within such time as is by this Act appointed, and from thence depart out of the Realm, according to this present Act, or after his departure shall return into any of her Majesties Realms or Dominions, without her Majesties speciall license in that behalf first obtained; that then every such person so offending shall be adjudged a Felon.

If any offender against this Act before he or they be required to make abjuration, repair to some Parish Church on some Sunday or Festival day, and then and there hear Divine Service, and make such submission as by the Act is prescribed, then the said offender is clearly to be discharged.

The offender shall forfeit his goods and chattels, and his lands during his life only; the offence shall work no loss of tower or corruption of blood, and the heir to inherit. The offender shall not have the benefit of his Clergy.

CAP. XXXIX.

Of Felony in Egyptians, &c.

1 & 2 Ph. & Mar.
cap. 4.
5 Eliz. cap. 20.

IF any outlandish people calling themselves, or being called Egyptians, shall remain in this Realm or in Wales one moneth, at one or severall times, and if any person being fourteen years old, which hath been seen or found in the fellowship of such Egyptians, or which hath disguised him or her self like to them, shall remain here or in Wales by the space of one moneth, either at one or severall times, it is Felony.

The offender shall not have the benefit of his Clergy.

CAP.

CAP. XL.

Of Felony in dangerous Rogues.

IF any dangerous Rogue that was banished the Realm or adjudged perpetually to the Gallies, have returned into the Realm without lawfull licence or warrant, it is felony: the felony to be tried where the offender is apprehended.

The offender may have the benefit of his Clergy.

If any Rogue after he hath been branded in open Sessions with a Roman R. upon the left shoulder, or sent to the place of his dwelling where he last dwelt by the space of a year, or the place of his birth, to be placed in labour, have offended again in begging or wandering, contrary to the said Statutes, it is felony, to be tried in the County where the offender shall be taken.

The offender against this shall not have the benefit of his Clergy.

Mendicus non erit inter vos, There shall be no begger among you.

Ordeine fuit que les povres fussent sustenus per les Parsons, Rectors, & les Parochians, cy que nul ne morust per default de sustenance.

See an ancient Ordinance in 30 E. 3. concerning Ribauds and sturdy Beggars, that they be gyven to their occupations or services, or to the place from whence they came.

39 Eliz. cap. 4.
1 Jac. cap. 7. 25.

39 Eliz. cap. 4.
1 Jac. cap. 7.

Deut. cap. 15. v. 4.
Mirr. cap. 1. §. 3.
Inter les Art. per
viels Royes or-
deins.
Ret. Par. 50 E. 3.
nu. 61.
Brit. 49. b.

CAP. XLI.

Of Felony by Forgery in the second Degree.

IF any person or persons being once condemned of any of the forgeries mentioned in the Act, shall after such his or their condemnation, est-sons commit or perpetrate any of the said offences in form in the said Act mentioned, that then every such second offence shall be adjudged felony. But no attainder of this felony shall extend to take away dowter, nor to corruption of blood, or disherison of the heir.

In 43 Eliz. Markham was attainted of felony upon this branch in the Kings Bench for a second forgery of many of the Mannors and lands late of Sir Thomas Gresham knight, and was executed therefore.

This felony is to be heard and determined before Justices of Oier and Terminer, and Justices of Assize in their Circuit. And albeit that Justices of Peace have power to hear and determine felonies, trespasss, &c. yet are they not included under the name of Justices of Oier and Terminer: for Justices of Oier and Terminer are known by one distinct name, and Justices of Peace by another. But the Justices of the Kings Bench are Justices of Oier and Terminer within this Statute.

The offender shall not have the benefit of his Clergy.

See hereafter in the exposition of this Statute for the first offence, where incidently there shall be more said concerning the second offence.

Markhams case
coram Rege,
43 Eliz.

Hil. 30. Eliz. cor-
ram Rege.
Lib. 9. fo. 118. b.
Smiths case:
3 Mar. Br. tit.
Oier & Term. 8.

CAP. XLII.

Of Felony for conveying of any Sheep alive out of the Realm in a second degree.

8 El. cap. 3.
See the statute of
3 H. 6. cap. 2.

His left hand cut
off.

NO manner of person shall bring, deliver, send, receive, or take, or procure to be brought, delivered, sent, or received into any ship or bottome, any Rams, Sheep or Lambs, or any other Sheep alive, to be carried and conveyed out of this Realm of England, Wales, or Ireland, or out of any of the Queens Dominions, upon pain that every such person, their aiders, abettors, procurers and comforters, shall for his and their first offence forfeit all his goods, and suffer imprisonment one whole year without bayl or mainprife, and at the years end in some market-~~place~~ in the fulness of the market have his left hand cut off, &c. And every person eftsoons offending against this statute shall be adjudged a Felon, &c.

But this Act shall not extend to any corruption of blood, or losse of Dotter. This felony is to be heard and determined before Justices of Oier and Terminer, Justices of Gaol-Delivery, and Justices of Peace. And the offender may have the benefit of his Clergy, as well in case of the cutting off his hand as in case of Felony. See Stanford 37. b.

CAP. XLIII.

Of Felony in servants that imbefill their Masters goods after their decease.

33 H. 6. cap. 1.

^a This extends to the Lord Keeper of the Great seal.
^b This extends to the Administrators, and also if there be but one Executor or Administrator.

^c Attainted by force of this Act of Parliament upon default.

See the like many

IF any of the household-servants of any person shall after the decease of their Lord or Master violently and riotously take and spoil the goods which were their said Lords or Masters, and the same distribute amongst them, that upon full information ^a to the Chancellour of England for the time being by the ^b Executors or two of them of such riot, taking, or spoil made, the Chancelour by the advice of the Chief Justices and Chief Baron, or two of them, shall have power to make so many and such writs to be directed to such Sheriffs as to them shall seem necessary, to make open proclamation in such sort as by the Act is prescribed, to appear in the Kings Bench, &c. And if any such writ be returned, &c. then if the said person or persons make default, then he or they making default shall be ^c attainted of felony.

The offenders shall have the benefit of their Clergy.

times in the Parliament Rolls. Rot. Parl. 15 H. 6. nu. 14, & 15. Rot. Parl. 18 H. 6. num. 28.

CAP.

C A P. XLIV.

Of Felony in servants that imbefill their
masters goods committed to their trust
above forty shillings.

EVery servant to whom any Caskets, Jewels, money, goods or Cattels of his or their master or mistress shall be delivered to keep, that if any such servant or servants withdraw him or them from their said masters or mistresses, and go away with the said Caskets, Jewels, money, goods or cattels, or any part thereof, to the intent to steal the same, contrary to the trust and confidence in him or them put, &c. Or else being in service of his said master or mistress, without the assent and commandement of his master or mistress, imbefill the same or any part thereof, or otherwise convert the same to his own use, with like purpose to steal it: If the Caskets, Jewels, money, goods or cattels be of the value of forty shillings or above, it shall be deemed and adjudged Felony.

Concerning the value, (to speak it once for all) *Tantum bona valent, quanto vendi possunt.*

This Act extendeth not to any Apprentice or Apprentices, nor to any servant within the age of eighteen years at the time of the offence committed.

Vide Dier 25 H. 8. fol. 5.

Dier 25 H. 8. f. 5.

1 E. 6. ca. 12.

By the statute of 27 H. 8. the offender was ousted of his Clergy, but that Act is repealed by 1 E. 6. cap. 12. So as at this day the offender may have the benefit of his Clergy.

¶ Shall be delivered by his or their master or mistress]

If the master deliver an obligation to his servant to receive the money there by due, and the servant receive the money of the obligee, and goeth away with the same with intent to steal the same, this is no offence within this Statute, because he had not the money of the delivery of his master: and if he had gone with the obligation with intent, ut supra, it had been also out of this Act, because it was a chose in Action. So if the master deliver to his servant wares or merchandizes to sell, and selleth the same and goeth away with the money, as before, this is no offence within this Statute for the cause aforesaid. See Stamford 37. b.

Dier 26 H. 8.

fo. 5. a. & b.

See the form of

the Indictment

upon this Stat.

Lamb. Inter Pra-

sidentes.

C A P.

CAP. XLV.

Of Felony to cut down or break up the
Powdike in Marshland in Norff.

22 H. 8. ca. 11.
2 & 3 Ph. & Mar.
cap. 19.

EVery perverse and malicious cutting down and breaking up of any part of the new Dike called the Powdike in Marshland in the County of Norff. or of the broken Dike called Oldfield Dike by Marshland in the Isle of Ely in the County of Cambridge, or of any other Bank being parcel of the Rinde and uttermost part of the said Country, is adjudged Felony.

The Justices of Peace have power to enquire of, and to hear and determine this felony. The offender may have the benefit of his Clergy.

Some say that this is a private Ad: but it is publicum in privato, for the danger is publick, though the place be private, and both concern multitudes of people; and the Sea is such an immense creature, as who can withstand it without length of time, infinite damage and loss, and extreme charge and cost?

43 El. cap. 13.
* See before
cap. 12. fo. 61, 62.
3 H. 7. cap. 2.
Vide 1 H. 5. c. 6.
simile de Gales.
* Black mail is
explained by the
Act it self.

See the Statute of 43. El. cap. 13. whereby in the Counties of Cumberland, Northumberland, Westmorland, and the B. of Duresme, * carrying away or detaining of any person against his will, or imprisoning him or them to ransom them or to spoil them, upon deadly feud or otherwise, or shall receive or carry * Black mail, or give Black mail for protection, &c. is made felony without benefit of Clergy,

CAP. XLVI.

Of one of the Grand Enquest being one of
the Indictors of any person or persons of treason
or felony, and discovering openly what per-
sons were so indicted, &c.

Stanf. fo. 36. a.

This by some opinion in our books was holden for treason, or felony, and hereof divers reasons were yeelded.
First, that such discovery was against his oath: but that could not be the reason, for perjury was neither treason nor felony.

Secondly, others did hold, that by this discovery the parties indicted of treason or felony might flee or escape: but that can be no reason; for this discovery without more, can neither make him principal nor accessory.

18 E. 3. Con. 272.
27 Aff. p. 63.
Georges case.

Thirdly, others that endeavour to confess and avoid the Authorities in this case in law, are of opinion, that in those times the intent of a man, in criminalibus, was much respected, in as much as In criminalibus voluntas reputabatur pro facto, and that by this open discovery, &c. his intent appeared, that they might flee or escape. And now it is agreed on all parts, that at this
day

day such discovery is neither treason nor felony: and the rather, for that no person ever died for such discovery. In Georges case, in anno 27 Lib. Ass. upon his Indictment he was acquitted. But certain it is, that such discovery is accompanied with perjury, and a great misprision to be punished by fine and imprisonment.

C A P. XLVII.

Of Larceny or Theft by the Common Law.

Having thus far proceeded, we are now come to Larceny, which cometh from Latrocinium; and from Latrocinie, by contraction, or rather abuse, to Larceny.

The Pirroz first describeth Larceny, and then explaineth it. Larcenie est prise d'autre meuble corporelle trecherousment contre la volunt de celui a qui il est p male egaigne de la possession, ou del use. When doth he explain and shew the reason of the principall words thereof.

Mirror cap. 1.
§ 10. De Larceny.

Prise est dit, car baile nest my title de laroun, ne livery en le case.

Meuble corporelle est dit, pur ceo q en biens nient meubles, ou nient corporels, sicome de tre, rents, & des Advowsons de Esclises, ne se fait nul larceny.

Trecherousment est dit, pur ceo q si lesloignour entende les biens estre siens, & que il les poer bien prendre, en tiel case ne se fait my ceste peche, nec en case ou len prent l'auroi p la ou len entend, que il pleist al seignior des biens que il les prendra, mes a ceo covient enseigner apparant presumption & evidenc.

Et sciendum, quod furtum est, secundum leges, contrafactio rei alienae fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerat. And then he also explaineth it. Cum animo dico, quia sine animo furandi non committitur. Bracton useth not the word latrocinium, but furtum, and so doth Glanville. See Britton a whole Chapter de Larcyns. And Fleta hath it thus, Est autem furtum contrafactio rei alienae fraudulenta, cum animo furandi, invito Domino cujus res illa fuerit, following Bracton totidem verbis. These descriptions are generally of Theft, comprehending Robbery, Burglary, when any thing is taken, and all other latrocines. But here Larceny for distinction sake is taken in a narrower sense, viz. for single theft or thievery, and may be described thus:

Bracton lib. 3.
fol. 150.

Glanv. lib. 7. c. 19.
& lib. 10. cap. 15.
Britton cap. 15.
de Larcyns, fo. 22.
Fleta lib. 1. ca. 36.

Larceny, by the Common law, is the felonious and fraudulent taking and carrying away by any man or woman of the meer personall goods of another, neither from the person, nor by night in the house of the owner.

Larceny defined.

Now let us peruse the principall parts of this description.

[Felonious taking.] First it must be felonious, id est, cum animo furandi, as hath been said. Actus non facit reum, nisi mens sit rea. And this intent to steal must be when it cometh to his hands or possession; for if he hath the possession of it once lawfully, though he hath animum furandi afterward, and carrieth it away, it is no Larceny: but this receiveth some distinction, as hereafter shall appear.

See tit. Piracy, &c.
Butlers case,
28 Eliz.

Secondly, it must be an actuall taking: for an Indictment, Quod felonice abduxit equum, is not good, because it wanteth cepit. By taking, and not bailing or delivery, for that is a receipt, and not a taking: and therewith agreeth Glanvil. Furtum non est ubi initium habet detentionis per dominum rei.

2 E. 3. 1.

But herein the Law doth distinguish. For if a Bale or Pack of merchandize be delivered to one to carry to a certain place, and he goeth away with the whole pack, this is no felony: but if he open the pack, and take any thing out animo furandi, this is Larceny. Likewise if the Carrier carry it to the place appointed, and after take the whole pack animo furandi, this is Larceny also: for the delivery

Glanvil lib. 10.
cap. 13.
13 E. 4. 9.

Charge.

3 H. 7. 12.
21 H. 7. 15.13 E. 4. 9.
Speciall use.22 Aff. pl. 99.
22 E. 3. cor. 265.See cap. de Treason, Verb. quant home, &c.
Et cap. Murder.
27 Aff. 40.2 E. 3. cor. 160.
Lex Inz cap. 50.
accord.
Stanf. 26. c.
15 E. 4. Cor. 383.

Mic. 37 E. 3. coram Rege. Rot. 83. Lincoln.

Bracon lib. 3.
fol. 151. b.Britton cap. 24.
fo. 47.

Fleta lib. 1. cap. 36.

Pasch. 15 Eliz.
Vide statutum.

22 Aff. pl. 39.

very had taken his effect, and the privity of the bailment is determined. And so it is of a Tun of Wine, or the like, mutatis mutandis.

Also there is a difference between a possession and a charge. For when I deliver goods to a man, he hath the possession of the goods, and may have an Action of trespass, or an Appeal, if they be taken or stoln out of his possession. But my Butler or Cook, that in my house hath charge of my Wessell or Plate, hath no possession of them, nor shall have an Action of trespass or an Appeal, as the Bailee shall: and therefore if they steal the plate or vessell, it is Larceny. And so it is of a Shepheard, for these things be In onere, & non in possessione Promi, Coci, Pastoris, &c.

If a Taverner set a piece of plate before a man to drink in it, and he carry it away, &c. this is Larceny: for it is no bailment, but a speciall use to a speciall purpose.

Thirdly, not by Trover or finding. If one lose his goods, and another finde them, though he convert them, animo furandi, to his own use, yet is it no Larceny, for the first taking is lawfull. So if one finde treasure trove, or waife, or Gray, and convert them ut supra, it is no Larceny, both in respect of the finding, and also for that Dominus rerum non apparet.

[Felonious] implieth, that though the taking be actual, yet must it be done by such persons as may commit felony. A mad man that is non compos mentis, or an infant that is under the age of discretion, cannot commit Larceny, as in another place we have said.

A feme covert committeth not Larceny, if it be done by the coercion of her husband; but a feme covert may commit Larceny, if she doth it without the coercion of her husband: and there it appeareth, that a man may be accessory to his wife, but the wife cannot be accessory to her husband, though she know that he committed Larceny, and reliebe him, and discover it not: for by the Law Divine, she is not bound to discover the offence of her husband.

Felons came to the house of Richard Dey and Margery his wife; the wife knew them to be felons, but the husband did not, and both of them received them, and entertained them, but the wife consented not to the felony. And it was adjudged, that this made not the wife accessory, Quia ipsa in vita mariti sui de aliquo receptamento in presentia viri sui, cui contradicere non potuit, occasio dari non debet.

Uxor furi desponsata non tenebitur ex facto viri, quia virum accusare non debet; nec detegere furtum suum, nec feloniam, cum ipsa sui potestatem non habet, sed vir.

La feme nequedent al felon poit dire q tout sçavoir ele del mauvasse son baron, pur ceo ne le poet ele my encuser, ne devoit, tant come ele fuit de luy covert, &c.

Uxor autem furis non teneatur pro delicto viri, poena enim suos debet tenere auctores: uxor autem virum accusare non debet, nec feloniam suam consentire, &c.

[Felonious and fraudulent taking.] If a man seeing the horse of B. in his pasture, and having a minde to steal him, cometh to the Sheriffe, and pretending the horse to be his, obtaineth the horse to be delivered unto him by a Replevin, yet this is a felonious and fraudulent taking, as it was resolved by the Judges, as Caelin Chief Justice reported in the Kings Bench, Pasch. 15 Eliz. for the Replevin was obtained in fraudem legis.

[Carrying away.] For the Indictment saith, felonice cepit & asportavit. The removing of the things taken, though he carry not them quite away, satisfieth this word asportavit. As if a guest take the coverlet or sheets of his bed, and rising before day, take the coverlet or sheets out of the chamber where he lay, into the Hall, to the intent to steal them, and went to the stable to fetch his horse, and the Officer apprehended him, this was adjudged Larceny: and the coverlet or sheets were carried away, being removed from the Chamber to the

the Hall, albeit they were still in the house of the owner.

So if a mans horse be in his close, and one taketh him, and as he is carrying him away, he is apprehended before he getteth out of the close, yet this is sufficient to make it Larceny.

Justice Daltons
Report.

¶ Of mere personall goods.] It is said [mere] for though they be personall goods, yet if they labour any thing of the realty, no Larceny can be committed of them: As any kind of corn or grain growing upon the ground is a personall chattell, and the Executors of the owner shall have them, though they be not severed; but yet no larceny can be committed of them, because they are annexed to the realty. So it is of grasse standing on the ground, or of Apples, or any other fruits upon trees, or bushes, or of woods growing; but if the owner cut the grasse, or gather the fruit, or cut the wood, then larceny may be committed of them.

12 E. 3. Cor. 199.
22 E. 3. lib. 256.
lib. 4. fo. 19.

So it is of a box or chest with Charters, no larceny can be committed of them, because the Charters concern the realty, and the box or chest, though it be of great value, yet shall it be of the same nature the Charters be of: & omne majus dignum trahit ad se minus.

10 E. 4. 14.
Lib. 8. fo. 33. b.
Caleys case.

No larceny can be committed by taking and carrying away of a ward or of a villain, because they are in the realty.

It appeareth by all our ancient Authoꝝ ubi supra, and by the statute of W. 1. that there is Grand Larceny and Petit Larceny, distinguished so by the value: for if the personall goods stolen amount to above the value of twelve pence, then is it grand larceny; and if it be under the value of twelve pence, then it is petit larceny, for which he shall forfeit all his goods, and suffer some corporall punishment, as whipping, &c.

W. 1. ca. 15. See
the exposition
thereof.
27 H. 8. 22.
Coriū forisfacere
or perdere, Sax.
tholiz his hide,
is to be whipt.
Mirror ca. 4. §.
De crime de rob-
bery.

And this was the ancient law before the Conquest, for the Mirror saith, Et tout soit que la ley ne eyt regard forsque al ceures des pecheurs nequident linir le quantite del robbery & larceny en cest manner, cest a savoir que nul ad judgeant de la mort, si non larceny, &c. ne passent 12 deniers de sterlings.

A man hath a meer property in some things that are tame by nature, and yet in respect of the baseness of their nature, a man shall not commit any larceny, great or small, though he steal them, as of mastifs, blood-hounds, or of other kind of dogs or of cats, nor of some things that be wild by nature, and made tame, as bears, foxes, apes, monkeys, polecats, ferrets, and the like, and yet no manner of felony can be committed on them, in respect of their wilde and savage nature, and therefore no person shall die for them: and likewise it is of their whelps, or Calves, or young; for it is a rule in law, that if no felony can be committed of any thing that is ferum natura, and of age being reclaimed, or made tame, that no felony can be of the young in the nest, kennell or den.

Lib. 7. fo. 18.
In case de Swans.
a Vide verb. (of
another) next
following.
12 H. 8. 39.
14 H. 8. 3. 4.
18 H. 8. 2.
2 E. 2. distress 10.
leveret. 2 E. 2.
Avowry. 182.
ferret.

So as a man may have property in many things, and yet in respect of their nature there can be no felony of them. On the other side, of some things that be ferum natura, being reclaimed, felony may be committed in respect of their noble and generous nature and courage, serving ob vitz solatium of Princes, and of noble and generous persons, to make them fitter for great employments: As all kind of Faulcons and other Hawks, if the party that steals them know they be reclaimed.

38 E. 3. 10.
47 E. 3. 10.
5 H. 5. 1.
9 H. 6. 2.
F.N.B. 87. a. &
88. l. 86. l.
b Mirror c. 1 §. 10.
Dier 14 El. 306.
307. 18 E. 4. 8.
16 E. 4. 11.
14 H. 8. 4.
Vide before.
37 E. 3. fo. 37.
F.N.B. 86. l.
c 18 H. 8. 2. b.
Doct. & Stu. 9. b.
Britton 74. 75.
Braft. l. 2. fo. 9.
8 E. 4. 5.
d 11 H. 7. ca. 17.
31 H. 8. ca. 12.

¶ Of another.] No larceny can be committed of wild beasts, or of fowls that be wild, or of fishes that be at their naturall liberty in rivers or great waters, because these be nullius in bonis: but larceny may be committed of young pigeons in dovecotes, or of young hawks in the nest. But if any person upon the ground of any other do take the eggs of any Faulcon, Goshawk, Lanner, or Swan out of the nest, this is not felony, but he shall be imprisoned by the space of a year and a day, and fined at the Kings will, the one half to the King, and the other to the owner of the ground. But larceny may be committed of the eggs of such as be domix natura, as of Hens, Turkies, Pheasants,

and

4 Stanf. 25. c.
12 E. 4. 4.
18 E. 4. 8.
22 H. 6. 59.
43 E. 3. 24.
Vid. before, Verb.
(Of meer personall goods)
3 H. 6. 55.
lib. 5. fo. 104. b.
lib. 7. fo. 16, 17.
b. 10 E. 4. 14.

7 E. 4. 14.
Stanf. 25.

12. 113. 10 Ja. Regis,
Hains case.
Furth in audi-
tum?

7 H. 6. 43.

21 H. 6. Cor. 455.
Abbridge daff. 63.

Britton fo. 74.

and the like. And larceny may be committed of fishes in a trunk or pond, because they are not at their naturall liberty, but as it were beasts in a pound.

b But if such as be wild, that serve for the food of man, be made tame, as Deer, wild Boar, Conies, Cranes, Whelant, Partridge, or the like, Larceny may be committed of them, so as he that stealeth them know that they be tame. But the Deer, &c. being wild, yet when he is killed larceny may be committed of the flesh, and so of Whelant, Partridge, or the like. And so note a diversity between such beasts as be fera natura, and being made tame serve for pleasure only, and such as be made tame and serve for food, &c. which diversity being not observed, hath made many men to erre.

A man may be indicted, Quare bona Capellæ, in ecclesia, &c. and so in time of vacation, bona domus Ecclesiæ.

At the Assises at Leicester, in Lent, Anno 19 Jac. the case was this: One William Hain had in the night digged up the graves of divers severall men, and of one woman, and took the winding sheets from the bodies, and buried the bodies again; and I advising hereupon for the rareness of the case, consulted with the Judges at Serjeants Inne in Fleetstreet, where we all resolved that the property of the sheets was in the Executors, Administrators or other owner of them, for the dead body is not capable of any property, and the property of the sheets must be in some body: and according to this resolution, he was indicted of felony at the next Assises; but the Jury found it but petit larceny, for which he was whipped, as he well deserved.

Nota. A felonious taking must be of the possession, and not of the property removed from the possession.

If a man both bail, or lend his goods to another, although he hath the generall property of them, yet may he commit larceny of them, by the felonious taking and carrying them away, and in judgement of law he is said in this case to take the goods of another: for the bailor hath in proprietatis, and the bailee hath in possessionis, or a speciall property.

The wife cannot steal the goods of her husband, for they be not the goods of another: for the husband and wife are one person in law, Dux animæ in carne una.

Vide Stanf. Pl. Coron. fo. 24, 25.

To speak it here once for all, if any person be indicted of treason, or of felony, or larceny, and plead not guilty, and thereupon a Jury is returned, and sworn, their verdict must be heard, and they cannot be discharged, neither can the Jurors in those cases give a pety verdict, but ought to give their verdict openly in Court.

Macegriefs, fleshmongers, such as buy and sell stolen flesh, knowing the same to be stolen. Vide Lamb. inter leges Edw. Regis fol. 140. b. De Machecariis, derived of mace an old word for flesh, and grief, wrong or injury.

CAP. XLVIII.

De Anno, Die & Vasso.

Of the Year, Day and Wast.

Hereof we have treated at large in the second part of the Institutes in his proper place, upon the exposition of Magna Charta c. 22. where it appeareth, that at this day the King shall have but the profits for a year and a day in lieu and satisfaction of the Wast which the Common law gave to the King in despite and detestation of the offence, as there you may read at large: and there it appeareth how necessary it is, ancient Authors to be read, all which need not here to be rehearsed: * and that if any Statute be made to the contrary of Magna Charta, it shall be holden for none. And therefore if *Prærogativa Regis* anno 17 E. 2. cap. ultimo, be contrary thereunto, it is repealed as to the Wast.

17 E. 2. *Prærogativa Regis* cap. ultimo. Regist. 165. Magna Chart. cap. 22. 3 E. 3. Cor. 356, 327, 310, 290.

Mirror cap. 1.
§. 3. & cap. 4.
§. Et le Roy in
remembrance, &c.
Lege quia opti-
me. Glanv. li. 7.
cap. 17.
Bracton lib. 3. fo.
129, 137.
Britton c. 5. f. 14.
Fleta lib. 1. c. 28.
§. *Causa vtro*, &c.
* 42 E. 3. cap. 1.

CAP. XLIX.

Of Piracy, felonies, robberies, murders
and confederacies committed in or upon
the Sea, &c.

Having now treated of felonies, &c. that are committed and done upon the land, we will consider of Piracies and felonies, &c. done on the sea, which by an Act of Parliament are to be enquired of, heard and determined according to the course of the Common law, as if they had been done upon the land.

All treasons, felonies, robberies, murders and confederacies committed in or upon the Sea, or in any other Haven, River, Creek, or place where the Admirall hath, or pretends to have power, authority or jurisdiction, shall be enquired, tried, heard, determined, and judged in such shires and places in the Realm as shall be limited by the Kings Commission under the Great seal, in like form and condition as if any such offence had been committed upon the land, to be directed to the Lord Admirall, or to his Lieutenant, Deputy or Deputies, and to three or four such other substantiall persons as shall be named by the Lord Chancellor of England for the time being, &c.

And such as shall be convict of any such offence by verdict, confession, or proces by authority of any such commission, shall have and suffer such pains of death, losses of lands, goods and chattels, as if they had been attainted of any treason, felony, robbery, or other the said offences done upon the land.

The offenders not to be admitted to have the benefit of Clergy.

R 2

The

Rot. Parl.
8 H. 6. nu. 42.

28 H. 8. cap. 15.

Vid. 27 E. 3. c. 13.
del staple.

31 H. 6. cap. 4.
Vide 2 R. 3. fo. 2.
Vide Palaches
case.

See before in the
chap. of Heresy.

Sec 40 Ass. pl. 25.

* Concerning
treason; see before
cap. 2. Verb.
All trials, fo. 25.
1 E. 6. cap. 12.
5 E. 6. cap. 11, &c.
4 Rot. Par. 8 H. 6.
nu. 43.

Hill. 2 Jac. Regis.
at Serjeants Inn
in Fleetstreet,
the resolution of
the Justices.

Three points
resolved.

Vide similia
19 E. 3. Cor. 124.
8 H. 4. 1.
9 E. 4. 28.

* See the fourth
part of the Insti-
tutes, cap. High
Treason.
5 El. cap. 5. Vide
supra, cap. High
Treason, Verbo
On per seculum, &c.

The mischief before this Statute was (as it appeareth by the Preamble) that Traitors, Pirates, Thiefs, Robbers, Murderers and Confederators upon the sea many times escaped unpunished, because the Common Law of this Realm extended not to these offences, but they were judged & determined before the Admiral, &c. after the course of the Civil laws, the nature whereof is, that before any judgment of death be given against the offenders, either they must plainly confess their offences (which they never will doe without torture or pains) or by witnesses indifferent, such as saw their offences committed, &c. which in these cases cannot be gotten but by chance, or very rarely. For this cause the Commons petitioned in Parliament in 8 H. 6. that the Justices of Peace might enquire of all Piracies: but the Kings answer was, That he would be advised.

This Statute requires a considerate and just interpretation, wherein, for that it concerneth the life of man, the safest way is, to follow the resolutions of all the Judges formerly had upon due consideration of all the parts of this Act, and upon divers conferences; whereon in the end, when I was Attorney general, it was resolved by them unanimously as followeth:

Where divers did in the reign of the late Queen Elizabeth commit Piracy and Robbery upon the high Sea, of divers Merchants of Venice in amity with the said Queen, and after the Pirates, being not known, obtained a pardon granted at the Coronation of King James, whereby the King pardoned them all felonies (inter alia) First, that before this Statute, Piracy or Robbery on the high Sea was no felony whereof the Common Law took any knowledge, for that it could not be tried, being out of all Towns and Counties, but was only punishable by the Civil Law, as by the Preamble it appeareth; the attainder by which Law brought no forfeiture of lands, or corruption of blood. Secondly, that this Statute did not alter the offence, or make the offence felony, but leaveth the offence as it was before this Act, viz. felony only by the Civil Law, but giveth a mean of trial by the Common Law, and inflicteth such pains of death as if they had been attainted of any felony, &c. done upon the land. But yet (as hath been said) the offence is not altered, for in the Indictment upon this Statute, the offence must be alledged upon the sea. So as this Act inflicteth punishment for that which is a felony by the Civil Law, and no felony whereof the Common Law taketh knowledge, Thirdly, although the King may pardon this offence, yet being no felony in the eye of the law of the Realm, but only by the Civil Law, the pardon of all felonies generally extendeth not to it, for this is a special offence, and ought to be especially mentioned.

Upon this resolution these consequents do follow. 1. That by the attainder upon this Act, though there be forfeiture of lands and goods, yet there is no corruption of blood. 2. Seeing the offence is not made felony by the laws of this Realm, there can be no Accessory of any felony by the laws of the Realm in this case, either before or after the offence, because the Principal is no felon by our law, neither doth this Act speak of any Accessory. 3. If there be an Accessory upon the Sea to a Piracy, that Accessory may be punished by the Civil Law before the Lord Admirall, but cannot be punished by this Act, because it extendeth not to Accessories, nor makes the offence felony. * Lastly, the Statute of 34 H. 8. cap. 2. taketh not away this Statute for treasons done upon the sea for the cause aforesaid. Which resolution I have thought good to report, because it openeth the windows of this Statute.

In Trin. 18 Eliz. in Lord Diers Manuscript, there is a Quere made, what offence it is to lodge and entertain upon the land a Pirat, knowing him to be a Pirat, and whether this Accessory upon the land shall be tried by this Statute, which is only of Principals in Piracy. And it was thought by the two Chief Justices, that the surest way was, to have the Commission in the County where the Accessory offended, and there both the Principal and the Accessory may be indicted and tried, Ut per Statutum anno 5 & 6 E. 6. Quere.

Hzc

Hac illc. So as this Quare is not cleared by the resolution of the Judges and questionless the Statute (intended of 2 & 3 E. 6. for there is no such thing in 2 & 6 E. 6.) extendeth only, when a murder or felony is committed in one County, and another person is accessory in another County (as hath been said before) but in that case the offence was committed upon the Sea, and not in any County, and so out of that Statute: and therefore this part of the Manuscript of the Lord Dier was not thought fit to be printed.

Bucler and other Pirats in Summer Vacation robbed others of her Majesties subjects upon the Coast of Northfolk, upon the high Sea, and brought divers of the goods so taken into the County of Northfolk, and there were apprehended with the goods. The question moved to Wray Chief Justice, and Justice Periam, Justices of Assize in Northfolk, was, whether they might be indicted of felony in Northfolk, as if one steal goods in one County and carry them into another County, he may be indicted in either County: and it was resolved by them, that they could not be indicted for felony in Northfolk, because the original taking was no felony whereof the Common law took consufance, because it was done upon the sea, out of the reach of the common law: and therefore not like the case where one stealeth in one County and carrieth the goods into another, for there the original act was felony whereof the law took consufance.

But now let us peruse the words of the Statute.

¶ Where Traitors, Pirats.] This word Pirat, in Latine Pirata, is derived from the Greek word *πειρατης*, which again is fetched from *πειρα*, a transeundo mare, of robbing upon the sea: and therefore in English, a Pirat is called a Robber and a Robber upon the sea.

¶ Treason, &c.] Note, treason done out of the Realm is declared to be treason by the Statute of 25 E. 3. And yet at the making of this Act of 28 H. 8. it wanted trial (as by the preamble of this Statute it is rehearsed) at the Common law. And therefore to establish a certainty therein, the Statute of 35 H. 8. was made, as is aforesaid, in the exposition of the Statute of 25 E. 3. See Pasch. 43. Eliz. lib. 5. fo. 107. Sir Henry Conables case.

Before the Statute of 25 E. 3. if a Subject had committed Piracy upon another (for so is the book to be intended upon a fact done before 25 E. 3.) this was holden to be petit treason, for which he was to be hanged and hanged; because Pirata est hostis humani generis, and it was contra ligeantiam suam debitum: but if an Alien, as one of the Normans who had revolted in the reign of King John, had committed piracy upon a Subject, this offense could be no treason, for though he were hostis humani generis, yet the crime was not contra ligeantiam suam debitum, because the offender was no Subject. But since the Statute of 25 E. 3. this is no treason in the case of a Subject.

¶ Upon the Sea, or in any other Haven, River, Creek or other place, where the Admirall hath or pretends to have power, authority or jurisdiction.] These words [or pretends to have, &c.] are thus to be understood, between the High-water mark and the Low-water mark: for though the land be infra corpus continentis at the reflow, yet when the sea is full, the Admirall hath jurisdiction super aquam as long as the sea flows: so as of one place there is divisum imperium at several times. But extend not to any Haven, River, Creek or other place, that is infra corpus continentis, for offences there committed were triable by the Common law, and out of the mischief and purten of this Statute, for in the preamble the sea is only mentioned, and in the body of the Act it is said, in like form and condition as if any such offence had been committed upon the land.

¶ As shall be named by the Lord Chancellor of England.] A nomination by the Lord Keeper of the great Seal of England was taken to be

2 & 3 E. 6. cap. 24.

Vid. Lib. 2. fo. 93.

Binghams case.

See the Lord

Sancars case,

lib. 9. 117, 118.

Anno 28 Eliz.

Buclers case.

lib. 2. fo. 93.

lib. 9. 117, 118.

lib. 9. 117, 118.

lib. 9. 117, 118.

lib. 9. 117, 118.

lib. 9. 117, 118.

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lib. 9. 117, 118.

5 Eliz. cap. 18.
Dier 241. the
case of Brook,
alias Cobham.

be within this Act by the greater opinion of the Justices: but the Statute of 5 Eliz. hath made a Declaration of the Common law concerning the power and authority of the Lord Keeper of the Great Seal, which hath cleared that and all other like questions.

¶ To hear and determine such offences after the common course of the Laws of this Land used for treasons, felonies, &c. done and committed upon the Land.] If the offender upon his arraignment before Commissioners by force of this Statute stand mute, he shall have judgement De peyne fort & dure, by force of this general branch, but it is out of the latter words of the Act, viz. And such as shall be convict of any such offence by verdict, confession, or Proces. For he that standeth mute, is not convict of the offence, but suffereth for his contumacy. Also it is neither by Verdict, Confession or Proces.

For peyne fort & dure, See in the second part of the Institutes, in the exposition upon the Statute of W. 1. cap. 12.

CAP. L.

Of Clergy.

VVhat person shall have his Clergy, for what offences, in what suits, who is Judge thereof, and at what time Clergy is to be demanded, you may read at large in Alexander Poulter's case in the eleventh part of my Reports: where also is resolved the diversity between a Clerk convict and a Clerk attaint; what a Clerk convict which hath his Clergy shall forfeit, and at what time; and that none that hath his Clergy allowed ought to make any purgation at this day; and that the King may pardon the burning of the hand, as well in an Appeal as upon an Indictment.

If the principal hath his Clergy before attainder, the accessory either before or after ought to be discharged.

You may add to the former Report a Record in Rot. Claus. An. 3 E. 3. m. 2, & 18. That for Matrilodge the Ordinary may allow Clergy. So as it is in the election of the Ordinary, either to allow or disallow Clergy in that case.

See a notable Record Trin. 21 E. 3. coram Rege, Rot. 173. Hereford, that Privilegium Clericale non competit seditiosis equitanti cum armis placis & coramuribus, per leges Angliæ.

It is provided by the Statute of 25 H. 8. that if any person be indicted of felony for stealing of any goods or chattels in any County, and thereupon arraigned, and be found guilty, or stand mute, or challenge peremptorily above the number of twenty persons, &c. they shall lose the benefit of their Clergy, in like manner as they should have done if they had been indicted and arraigned and found guilty in the same County where the same robbery or burglary was done and committed, if it shall appear to the Justices, &c. by evidence given before them, or by examination, that for such robbery or burglary in the same Shire where they were committed or done, they should have lost the benefit of their Clergy by force of the said Statute, viz. of 23 H. 8. cap. 1.

¶ Any person indicted.] This Act extendeth not to Appeals by Writ or Bill, nor to the Appeals of the Approvers.

¶ Or by examination.] By these words though the offender confesses the Indictment, or stand mute, or challenge above twenty, &c. yet if by examination

Lib. 11. fo. 29, 30.
See Alexander
Poulter's case.
Lib. 5. 26, 27. in
Caudries case.
Vid. Lib. 5. fo. 50.
Biggens case, &
fo. 110. Hellons
case.
18 Eliz. cap. 6.
Lib. 4. fo. 43, 44.
Syers case.
ib. Births case.
2 E. 3. 27.
22 E. 3. Br. cor.
260.
7 H. 4. 16.
10 H. 4. 5.
3 H. 7. 1.
3 H. 7. cor. 53.
4 E. 6. cor. 184.
3 Aff. 14. 5 Aff. 5.
11 H. 4. 93.
b Rot. cl. 3 E. 3.
m. 2, 18.
c Tr. 21 E. 3. cor.
rege, Rot. 173.
Hereford.
d 25 H. 8. cap. 3.
32 H. 8. cap. 3.
Vid. 1 E. 6. ca. 12.
5 E. 6. cap. 10.

e Poulter's case,
ubi supra fo. 31.

tion before the Justices the truth of the case appeareth, he may be put from his Clergy.

¶ By force of the said Statute, viz. 23 H. 8. As if for any Burglary or Robbery in one County he were not ousted of his Clergy by the Statute of 23 H. 8. but some later Statute, then the Delinquent shall have his Clergy in the County where the goods are carried. For example, if the robbery be done in a dwelling house, the owner or dweller, his wife, his children, or servants then being within the house, and put in fear and dread by the same, and the goods be carried into another County, he shall not have his Clergy: but if the robbery in the dwelling house be not done with all the circumstances mentioned in this Act of 23 H. 8. (which circumstances are not required by the Statute of 5 E. 6. cap. 9.) he shall not be ousted of his Clergy in the other County. And so of all like cases.

Vid. Stanf. pl. cor. fo. 123, &c. De Clergy.

¶ & 1 Jac. cap. 8. Clergy taken from him which doth have another that hath not upon a weapon, nor stricken first.

CAP. LI.

Of Abjuration and Sanctuary.

Abjuration by the course of the Common law may be thus described. When a man or a woman had committed felony, and the offender for safeguard of his or her life had fled to the Sanctuary of a Church or Churchyard, and there before the Coroner of that place within forty days had confessed the felony, and took an oath for his or her perpetual banishment out of the Realm into a foreign country, choosing rather, *Petere patriam quam vitam*. But that foreign country, into which he was to be exiled, must not be amongst Infidels. And this was the ancient law of this Realm, which was, *Prohibemus autem ne Christiana fide tinctus quispiam à regno procul amandetur, neve ad eos qui nondum Christo fidem adjunxerunt relegatur, ne eorum aliquando fiat animorum iactura quos propria Christus vita redemit.*

Cust. de Norm. cap. 24. & 8. Inter leges Inz, cap. 5.

The foundation of the Abjuration was the Sanctuary of the Church or Churchyard. For he or she that was not capable of this Sanctuary, could not have the benefit of Abjuration. And therefore it is said, that he that committed Sacrilege, because he could not take the privilege of Sanctuary, could not absjure. For the form of Abjuration see the Statute of Abjuration, *Ver. Magna Charta*, part. 1. fol. 167. b. The Common law herein was very ancient, and had saved the life of many a man; and continued without change untill an Act made in the Twenty second year of H. 8. cap. 14. whereby it was provided, that the party absjured should not be banished out of the Realm, but to some other Sanctuary within this Kingdom: and to say the truth, Abjuration was exceedingly intricate and perplexed by the said Act of 22 H. 8. cap. 14. and other statutes. For which causes all Statutes made before the Thirtieth year of Queen Elizabeth concerning absjured persons, stand repealed by the Statute of 1 Jac. cap. 25. whereby the ancient Common law concerning abjuration for felony was revived.

Inter leges Canuti, fo. 105. ca. 3. 48 E. 2. cor. 420. b Sir Thomas Weyland Chief Justice of the Common Pleas, Anno 17 E. 1. Vid. Inter placita Parl. An. 19 E. 1. apud Ashring in Cr. Epiphaniæ. 650 E. 3. cap. Artic. Cleri. 9 E. 2. c. 10. 1 R. 2. cap. 9. 7 H. 7. cap. 7. 21 H. 8. cap. 2. 22 H. 8. ca. 14. 26 H. 8. cap. 13. 28 H. 8. cap. 1. 33 H. 8. cap. 15. 1 E. 6. cap. 12. 2 E. 6. ca. 2, & 33. 5 E. 6. cap. 10. 13 Eliz. ca. 7. 1 Jac. cap. 25. d 21 Jac. in the continuance of Statutes, &c. e 35 Bl. ca. 1 & 2.

¶ But by an Act made in the Twenty first year of King James it is enacted, that no Sanctuary or privilege of Sanctuary should be admitted or allowed in any case. By which Act, such abjuration as was at the common law, founded (as hath been said) upon the privilege of Sanctuary, is wholly taken away: and the Writ in the Register 69. a. *De restitutione extracti ab Ecclesia* is become of no use.

• And yet the abjuration by force of the Statute of 35. Eliz. ca. 1. before Justices

ccs

res of Peace, or Justices of Assize, or by force of an Act made at the same Parliament, cap. 2. before two Justices of Peace or the Coroner by a Recusant, remaineth still: because such abjuration hath no dependency upon any Sanctuary. Which being sufficient to shew how the Law standeth at this day, both concerning Sanctuary and Abjuration, might suffice.

But yet he that is desirous to read the generall learning of Abjuration the Branch, and of Sanctuary the Root, let him read the Mirror, cap. 1. § 13. & cap. 5. § 1. where he may read the right use of Abjuration by the ancient law of England. Et inter leges Edwardi nu. 10. Custom. de Normandie cap. 24. Officium coronatorum, tit. Abjuration, Rast. pl. 2. Bracton li. 3. fo. 135. & 136. Britton cap. Abjuration, fo. 24. & cap. Coroners, fo. 7. and Fleta lib. 1. cap. 29 § 8 E. 2. ubi supra. 3 E. 3. Coron. 313, 335. 21 E. 3. 17. 29 Aff. p. 34. Rot. Pat. 25 E. 3. part. 3. m. 16. Hill. 43 E. 3. Rot. 10. Coram Rege Buck. Hill. 26 E. 3. Coram Rege Rot. 20. Quando aliquis abjuravit regnum, Crux ei deliberat fuit in manu sua portanda in itinere suo per semitas suas, & vocatur Vexillum Sanctæ Ecclesiæ. Rot. Parl. 2 R. 2. nu. 28. the right use of Sanctuary. 6 H. 4. 2. 8 H. 4. 2. 11 H. 4. 40. 7 H. 6. 8. 27 H. 6. 7. 2 E. 4. 27. 21. 9 E. 4. 29. 12 E. 4. 1. 2. 3 H. 7. Coron. Fitz. 54. 1 H. 7. 23. 25. 8 H. 8. Kelway, 188, 189, 190, 191. Fitz. Justice of Peace, fol. 202. Stanf. pl. cor. cap. Abjuration, fo. 116, 117, &c. Et ibidem Sanctuary, cap. 38. Dier 13 Eliz. fo. 296. Lib. 5. fo. 12, 26. Lib. 6. fo. 9. Lib. Intrat. Tit. Abjuration & Sanctuary.

CAP. LII.

De Huesio & Clamore.

Of Hue and Cry.

The one being an expression of the other. For huer in French (unde Huesum) is to hoot or shout; in English to cry. There be two kinds of Hues and Cryes, the one by the Common law, and the other by statute. Whereupon there are two pursuits, the one for the King, the other for the party by private suit.

Hue and Cry by the Common law, or for the King, is, when any felony is committed, or any person grievously and dangerously wounded, or any person assaulted and offered to be robbed either in the day or night; the party grieved, or any other, may resort to the Constable of the Town, and acquaint him with the causes, describing the party, and telling which way the offender is gone, and require him to raise Hue and Cry. And the duty of the Constable is, to raise the power of the town, as well in the night as in the day, for the prosecution of the offender; and if he be not found there, to give the next Constable warning, and be the next, untill the offender be found: and this was the law before the Conquest. c Si quis latroni obviam dederit, eumque nullo edito clamore abire permiserit, quancunque fuerit latronis vita æstimata extremum solvat denariolum, aut pleno perfectoque jurejurando de facinore se nihil habuisse cogniti confirmato. Sin quis proclamantem exaudierit, neque vero fuerit insequutus, suæ in regem contumaciæ (non omnem criminis suspicionem diluerit) pœnas dato.

In antiquo MS. Si quis furi obviaverit, & sine vociferatione gratis eum dimisit, emendet secundum Weram ipsius furis, vel plena lada se adlegiet, quod cum eo falsum rescivit: si quis audito clamore supersedit, reddat Oversameffa regis, aut plene se laidiet. Bracton, who wrote before any Act of Parliament concerning Hue and Cry, saith, Omnes tam milites, quam alii qui sunt 15 annorum

a Rot. Parl. An.
6 E. 3. num. 6.
Constable of the
town to make
hue and cry.

b 2 E. 4. 8. b. &
9. 2.

c Inter leges Ca-
nuti fo. 110. c. 26.
See Inter leges
Edw. Conf. ca. 21.

For Oversameffa,
See lib. Rub.
cap. 36.
Bracton li. 3. fo.

norum & amplius, jurare debent, quod uilagos, murtiores, robbatores, & burglatores non recipient, &c. Et si Huresium vel Clamorem de talibus audierint, statim audito clamore sequantur cum familia, &c. and herewith agreeth Britton.

The Statute of W. 1. cap. 9. being in affirmance of the Common law, robbeth, Que tous communement soient prests les sermons des Viscounts, & au crie de pais de suer & arrester felons, quancimilte serra, auxibiens deins franchises come dehors.

And the Statute of 4 E. 1. declareth the law similiter de omnibus homicidiis, Burglar, occisis, seu periculis levatur Huresium, &c. & omnes sequantur Huresium & veltigium si fieri potest: & qui non fecerit, & super hoc convictus fuerit, attachietur quod sit coram Justiciariis de Gaols, &c. And by that Act it appeareth that so it is in case of Rape, and therewith agreeth Bracton also.

The life of hue and cry is freely suit.

Thamar the daughter of King David being violently ravished by her brother Amnon, the Tert saith of her, Quæ aspergens cinerem capiti suo, scissâ talori tunicâ, impossibilisque manibus super caput suum ibat ingrediens, & clamans.

They which levy not Hue and Cry, or pursue not upon hue and cry, shall be punished by fine and imprisonment. Also if a man be present when a man is murdered, or robbed, and doth not endeavour to attach the offender, nor levy hue and cry, he shall be fined and imprisoned.

Of Hue and Cry by force of Acts of Parliament in five cases. First, if a watchman doth arrest a night-walker, and he disobey and fly, the watchman may make hue and cry.

2. Si quis Forestarius, Parcarius, aut Warrennarius in baliva sua malefactores aliquos invenit vagantes ad dampnum ibidem faciend', & qui se Forestarii aut Warrennarii illis post Clamorem & Huresium levatum ad pacem regis ad standum recte reddere noluerint, imo ad maliciam suam exequend' & continuand' & pacem regis diffugiend' fugam fecerint, & vi & armis se defenderint, licet Forestarii, Parcarii & Warrennarii illi, aut alii quicunque ad pacem domini regis existentes in comitiva Forestariorum, Parcariorum, aut Warrennariorum illorum venientes ad tales malefactores sic inventos arrestand' seu capiend', aliquem seu aliquos hujusmodi malefactorum interfecerint, non propter hoc occasionentur coram domino rege, & justiciariis quibuscunque aut aliis balivis domini regis, aut aliorum quorumcunque infra libertatem aut extra, nec propter hoc amittant vitam aut membrum, aut aliam poenam subeant, imo firmam pacem domini regis inde habeant. Sed bene caveant Forestarii, Parcarii, Warrennarii, & alii quicunque, ne occasione contentions, discordiarum, contumeliarum, aut alicujus malevolentiarum seu odii præhabiti aliquibus per balivas suas transirent malitiose imponant, quod occasione maleficientium in balivis suis intrant, cum hoc non fecerint, nec ipsos vagantes ut malefaciant, nec malefacientes invenerint, nec causam malefaciendi quærentes, & sic eos occidant. Quod si fecerint, & de hoc fuerint convicti, fiat de morte sic interfectorum, prout aliorum ad pacem domini regis existentium, & prout de jure, & secundum consuetudinem regni fuerit faciend'.

3. Wellshmen outlawed, or indicted of treason or felony, that fly into Herefordshire, shall be apprehended, &c. or else pursued by hue and cry, and a forfeiture upon those that doe not pursue.

4. Hue and Cry shall be levied upon takers of carriage within the Mierge of the Staple of that which pertaineth to the Staple.

5. Where a man is robbed, upon hue and cry, &c. what remedy he shall have against the Hundred, &c. and how and in what manner the hue and cry shall be made in that case, see the Statutes, & lib. 7. fo. 6 & 7. the Statutes well expounded. And this robbery must be done in the day-time, and not in the night, otherwise the party grieved shall not have his Action. And so note a diversity between a hue and cry at the Common law, or for the King, and a hue and cry by Statute where the party grieved is to have his remedy by private Action. Note also a diversity in the prosecution at the Common law, or for the King, and by the Statutes which give the party remedy: for a prosecution to the next Constable is

¶

good

Britton fo. 15, & 19.
Fleta li. 2. c. 29.
See the 2. part of the Institutes.
W. 1. ca. 9.

4 E. 1. de officio coronatoris.
See the Statute of Winch. 13 E. 1.
* 7 E. 3. fo. 16.
23 Ad. 57.
38 E. 3. fo. 6. assaulted to be robbed.
9 E. 4. 26.
See the Custom of Norm. ca. 241.
4 Bracton li. 2. fo. 28 E. 3. ca. 11.
b 2 Regum, c. 13. vers. 19.
6 Bract. li. 3. fo. 118. b.
Ca. Itin. m. c. 155.
3 E. 3. Cor. 333.
d See 8 E. 2. Cor. 395.
e Stat. de Wink. watch.
4 H. 7. fo. 2. 18.
f Statutum de Anno 11 E. 1. Magna Chart. fo. 118. a. & 118. b. Foresters.

23 H. 6. ca. 5.
Vid. 17 H. 8. c. 16.
Wellshmen.

27 E. 3. ca. 4. Staple.
Winch. 13 E. 1.
28 E. 3. c. 11.
27 El. c. 13.
38 El. ca. 25.

Lib. 7. fo. 3. 3.
21 El. Dier 370.

29 E. 3. 9.
38 E. 3. 6.
See 5 H. 7. 5. 2.
41 H. 7. 28. a.

Stat. de 13 E. 1.

De civitate London capienda in manum Regis, pro Hincio non levato.
Rot. Claus.
30 H. 7. m. 5.

god by the Common law, but so it is not by the said Statutes, which give the party prieth his Action. See lib. 7. fo. 7. & 8. 12 El. Dier 370. For the prosecution at the Common law is a good excuse upon an indictment at the things said; but note that it is no bar to the parties Action.

Where Hue and Cry either by the Common law or by force of any Statute is levied upon any person, the arrest of such person is lawful, although the cause of the Hue and Cry be feigned; and if the case be feigned, he that levies the same shall also be arrested, and shall be fined and imprisoned. But common fame and voice is not sufficient to arrest a man in case of felony, unless a felony be done indeed.

It is an article of the Act, to enquire of Hues and Cries levied and not pursued.

Mandatum est Guiljelmo de Haverhull Thesaurario Regis, quod Civitatem London capiat in manum Regis, eo quod Cives ejusdem Civitatis non levaverunt Hutehum & Claimorem pro morte Magistri Guidonis de Arretio & aliorum interfectorum, secundum legem & consuetudinem Regni. Teste Rege apud Wendestok 22 die Augusti.

CAP. LIII.

Of Mayhem.

Of Mayhem you may read at large in the first part of the Institutes, Sect. 194. & 592. and in Justice Searford. And where (as it is there cited) he saith, *Castro vero, quavis latens sit, adjudicatur mayhemium*; here we find an example.

b H. Hull indicatus fuit de mayhemio, eo quod abscidit virilia Joannis monachi, &c. quem idem H. deprehendit, &c. cum A. uxore sua. Of the like accident you may read in Camden.

c Dominus Robertus Nevil (cum numerosam prolem ex uxore suscepisset) ignotus in adulterio deprehensus, & ab adultera matre in vindictam genitalibus mutilatus, brevi vi doloris expiravit.

Vide inter leges Alveredi, cap. 40. de vulneribus, fo. 43.

d By the ancient law of England, he that maimed any man, whereby he lost any part of his body, the Delinquent should lose the like part; as he that took away another mans life, should lose his own.

And it is truly said, that *Drillum est Mahemium inceptum*, and *Mahemium est Homicidium inchoatum*. And therefore in the Appeal or indictment it is said *Felonice mayhemavit*.

a First part Institutes 5. 194, 592.
Stanf. Pl. Cor.
38. b.
Cust. de Norm.
ca. 79. Mcchaimus.
Brafton lib. 3.
144. 145.
Fleta li. 1. ca. 38.
b Rot. Claus.
anno 13 H. 3.
nu. 9.
See before ca. 13.
for cutting off of
tongues, &c.
c Camden Brit.
pag. 593.
d Braft. lib. 3.
fo. 148. nu. 3.
Mittor cap. 4. 5.
De parricidiis diversis modis. Brit. fo. 48. b. Fleta li. 1. ca. 38. Membrum pro membro. 18 E. 3. 20. a.
Vide 18 E. 3. fo. 94. 8 H. 4. 20. 21. Coron. 458.

CAP.

CAP. LIV.

Of Premunire.

Primement, pur ceo que monstre est a nostre seignior le roy per grevous & clamouſes pleints des Grandees & Communes avant ditz, coment plusors gents sont, & oint estre treits hors de realme a resſponder des choses dont la conſans apperteint a la court nostre Seignior le roy; & auxint que les juggements rendus in meſme le court sont empeache en autre court, in prejudice & diſheriſon nostre dit Seignior le roy & de ſa corone, & de tout le people de ſon dit realme, & in deſeafance & anientifment de la Common ley de meſme le realme uſe de tous temps: Sur quoy eue bone deliberation ove les Grandees & auters de dit counsell, Affentus est & accord per nostre dit Seignior le roy, & les Grandees & communes ſuiſditz, Que tous gents de la ligeance le roy, de quel condition que ilz sont, que trahent nulluy hors de realme en plea dont le conſance apperteint a la court le roy, ou des choses dont judgement ſoit rendus en le court le roy, ou que ſuent en autri court a deſaire ou impeacher les juggements rendue in le court le roy, eient joure, &c. In English thus;

27 E. 3. cap. 1.
The print being
examined agreeth
with the Record.
See the first part
of the Institutes,
Sect. 199.

The Statute of
16 R. 2. cap. 9
saith, In curia
Romana, vel
alibi.

First, because it is shewed to our Lord the King by the grievous and clamorous complaints of the Great men and Commons aforesaid, how that divers of the people be, and have been drawn out of the Realm to answer of things whereof the cognisance pertaineth to the Kings Court; and also that the judgements given in the said Court be impeached in another Court, in prejudice and diſheriſon of our Lord the King and of his Crown, and of all the people of his said Realm, and to the undoing and destruction of the Common law of the same Realm at all times used: Whereupon, upon good deliberation had with the Great men and other of his said Council, it is assented and accorded by our Lord the King, and the Great men and Commons aforesaid, that all the people of the Kings ligeance, of what condition that they be, which shall draw any out of the Realm in plea, whereof the cognisance pertaineth to the Kings Court, or of things whereof judgement is given in the Kings Court, or which do sue in any other Court to defeat or impeach the judgement given in the Kings Court, shall have day, &c.

The effect of the Statute of 16 R. 2. is, If any pursue or cause to be pursued in the court of Rome, or elsewhere, any thing which toucheth the King, against him, his Crown and Regality, or his Realm, their Potaries, Procurators, or Fantozs, &c. shall be out of the Kings protection.

16 R. 2. cap. 9.
The Statute of
16 R. 2. cap. 9
saith, In curia
Romana, vel
alibi.

Fourth part of the
Institutes cap. 8.
Artic. 1. Die De-
cemb. Anno 21
H. 8. against Car-
dinal Woolsey.
Ver. N. B. 143.

In this Act is declared the Sovereignty, Prerogative and Freedom of the Crown of England; and the first Article exhibited by the Lords of the Council (whereof Sir Thomas More Chancellor was one) and the principal Judges concerning this matter, is worth your reading.

This offence is called a Premunire of the words of the Writ, grounded upon this and other Statutes for punishment thereof. For the words of the Writ be, Rex vicecomiti, &c. Premunire fac, A. B. &c. And rightly it is so called, for he that is pramonitus is pramonitus.

Before the making of this Statute of 27 E. 3. there were three great mischiefs. First, that the Kings subjects have been drawn out of the Realm to the answer of things whereof the consuance pertained to the Kings Court. Secondly, of things whereof judgements have been given in the Kings Courts. And thirdly, that after judgements given in the Kings Courts of the common law, of matters determinable by the common law, suits were commenced in other Courts within this Realm, to defeat or impeach those judgements. And these three mischiefs had three unsufferable effects. First, the prejudice and disherison of the King and of his Crown. Secondly, the disherison of all his subjects. And thirdly, the undoing and destruction of the common law of this Realm: all which appear in the preamble of this Act.

They are called other Courts, neither because they proceed by the rules of other laws, as by the Canon or Civil law, &c. or by other trials then the common law both warrant. For the trial warranted by the law of England for matters of fact, is by verdict of twelve men before the Judges of the common law of matters pertaining to the common law, and not upon examination of witnesses in any Court of equity. So as *alia curia*, is either that which is governed per *aliam legem*, or which draweth the party ad aliud examen. For if the freehold and inheritances, goods and chattels, debts and duties, wherein the King or subject hath right or property by the common law, should be judged per *aliam legem*, or be drawn ad aliud examen, the three mischiefs aforesaid expressed in the preamble and in this Act should follow, viz. disherison of the King and of his Crown, the disherison of all his people, and the undoing and destruction of the common law at all times used: by which words of this Act it appeareth that all these mischiefs were against the ancient common laws at all times used. And that also appeareth by the ancient Writs of the common law, called *Ad iura regia*, whereof some touch hath been given before, and which are worthy the reading: and also by divers Acts of Parliament; as the Statute of Carlile, Anno 35 E. 1. whereof we have treated before in the Second part of the Institutes, and by the Statute of 25 E. 3. *De provisionibus*. And it is observed, that in 29 E. 3. within two years after the said Act of 27 E. 3. they that were called in question upon the Statute of Premunire, *Invenierunt manucaptores sufficientes, & sacramentum prestiterunt, quod non attemptabunt, citra mare vel ultra, quod in prejudicium regis, legum, seu coronæ, seu judiciorum in curia Regis redditi, tendere valeat quoquo modo, &c.* Whereby, and many other like Records, it appeareth, that judgement ought not to be questioned *citra mare* in any Court, unless it be according to the course of the Laws of the Realm.

By the Statute of 4 H. 4. cap. 23. it is ordained and stablished, that after judgements given in the Courts of our Lord the King, the parties and their heirs shall be thereof in peace, untill the judgement be undone by attain, or by error, if there be error, as hath been used by the Laws in the times of the Kings Progenitors.

Also that which hath been said appeareth by our Books and ancient Records, as hereafter shall appear.

5 E. 4. fo. 6. where the Statute of 16 R. 2. cap. 5. saith, *In curia Romana vel alibi*, Ecclesiastical courts within the Realm are within this word [alibi].

Mich. 11 H. 7. it was adjudged by the whole Court, that a suit in the Ecclesiastical Court within the Realm for a temporal cause, was in case of Premunire.

410 H. 4. i. 2.
18 H. 6. 6. b.
65 E. 4. 6. b.
44 E. 3. 36.
61 H. 7. Pre-
munire Fitz.
15 H. 7. 9. ac-
hib. Inter. Rast.
468.

^d A president of a Premunire, for suing in the Ecclesiastical Court for a debt. ^d Rast. pl. 429. b. & 430.
^e It was resolved, that he that sued in the Ecclesiastical Court for the forfeiture of a last Will and Testament, incurred the danger of a Premunire, because the party grieved might have his remedy by the common law. And in the same year of 17 H. 7. Justice Spilman also reporteth, that one Turberville, as well for the King as for himself, did sue a Premunire against a person for suing for tithes in the Ecclesiastical Court, alledging the same to be severed from the nine parts, and judgement was given against the defendant.

^e 17 H. 7. of the report of Justice Spilman.

Also it appeareth that the Admirals Court is within this word [alibi] if he hold plea of any thing which is not done *super alium mare*, but *infra corpus comitatus*.

^f Richard Beauchampe Esquire and Thomas Pauncefoot Esquire, and others, are charged with the offence of Premunire, for that they sued John Credley Esq; before Henry Duke of Exeter Admiral of England, for taking away a Cross of gold and other goods, supposing the same to be taken *super alium mare*, where in truth they were taken at Stratford in the County of Essex; where the Statute of 16 R. 2. is recited, that none should sue in *curia Romana seu alibi*, &c. and that the consuance of this plea belonged to the common law, and not to the Court of the Admiral. And so it is of the Constable and Marshal, if they hold plea of a matter determinable by the common law.

^f Mic. 38 H. 6. coram Rege.

^g Isabel Winnington exhibited a bill of Premunire against William Powdich upon the Statute of 16 R. 2. cap. 5. for suing in the Admiral court before John Earl of Huntingdon, Admiral of England, for a cause which belonged to the common law, whereunto the defendant pleaded not guilty.

^g Mic. 9 H. 7. coram Rege. Rast. pl. 23. but this cause is entred Trin. 9 H. 7. Rot. 37. coram Rege.

And the reason of all these cases is, because they w^{re} matters triable by the common law ad aliud examen, and to be discussed per aliam legem.

But some have made a question, Whether since the Ecclesiastical Jurisdiction was acknowledged to be in the Crown, an Ecclesiastical Judge holding plea of a temporal matter belonging to the common law, doth incur the danger of a Premunire. Though hereof there is no question at all, yet lest any man might be led into an error in a case so dangerous, we will clear this point by Reason, Precedent and Authority. The reason holdeth still to w^{re} the matter ad aliud examen, &c. And the like question might be made for the Admiral court, which is, and ever was, the Kings Court, but governed per aliam legem: and so likewise of the Court of the Constable and Marshal.

At a Convocation holden Anno 22 H. 8. by a publick instrument made by all the Bishops and the whole Clergy of England, the King was acknowledged to be Supreme head of the Church of England. After this, viz. 24 H. 8. it appeareth that the Statute of Premunire remained in force against Ecclesiastical Judges, for holding of pleas merely determinable by the common law.

^h 24 H. 8. tit. Premunire, Brook 16.

In 25 H. 8. Richard Nick Bishop of Norwich was attainted in a Premunire at the Kings suit, and his case was this. Within the Town of Thetford there then was a custom, that all Ecclesiastical causes arising within the said Town should be determined before the Dean there, having a peculiar Ecclesiastical Jurisdiction, and that no inhabitant of the same town should be w^{re} before any other Ecclesiastical Judge, and that every person suing contrary to that custome, the same being presented before the Mayor of Thetford, should forfeit six shillings eight pence; and that an Inhabitant of Thetford, for an Ecclesiastical cause rising within Thetford, sued another before the Bishop of Norwich within his Consistory court at Norwich: and this was presented before the Mayor of Thetford according to the custome, whereby he forfeited six shillings eight pence. The said Bishop cited the said Mayor for taking of the said Presentment Pro salute anime to appear before him at his house at Woron in Suffolk, where the Mayor appeared, and there the Bishop ore tenus insojned him upon pain of Excommunication to adnuil the said Presentment before a day. And for this offence he was attainted in a Premunire upon his confession before Sir James Chief Justice and the Court of Kings Bench, upon the Statute

Hil. 25 H. 8. coram Rege. Rot. Rich. Bishop of Norwich his case.

of 16 R. 2. the Record wherof we have seen. By which judgement two points are cleared. First, that the Statute of Premunire extends to Ecclesiastical courts within the Realm. Secondly, that after the King was in possession of his Supremacy, the Bishops incurred the danger of Premunire.

Trin. 36 H. 8. coram Rege, Rot. 9. the B. of Bangors case.
D. & St. lib. 2. cap. 24. fo. 106. b. Lib. 2. cap. 23.

The Bishop of Bangor was attainted in a Premunire for holding plea of an Absolution, and of tithes severed from the nine parts.

Saint Germin in his Book of Doctor and Student, who wrote after 26 H. 8. holdeth, That if a man maketh a promise for a temporal thing, and swear to perform it, and doth it not, if he be sued for perjury in the Spiritual court, a Prohibition or a Premunire lyeth in that case. Also he saith, If a man be excommunicate in the Spiritual court for trespass, or such other thing as belongs to the Kings Crown and his Royal Dignity, &c. the party, if he will, may have a Premunire fac. against him.

Br. tit. Premunire. 21.
Temps E. 6.

Brook reporteth, that Barloe Bishop of Bath and Wells, in the reign of King E. 6. deprived the Deane of Wells, which Deanry was a Donative, and thereby incurred the danger of a Premunire.

1 Eliz. cap. 1.

By the Statute of 1 Eliz. (which restoreth the ancient Jurisdiction Ecclesiastical to the Crown) the Act of 1 & 2 Ph. & Mar. cap. 8. is repealed. But there is a special proviso in that Act of 1 Eliz. that it should not extend to repeal any Clause, Matter or Sentence, contained or specified in the said Act of 1 & 2 Ph. & Mar. which doth concern matter of Premunire, but that so much of that which concerneth any matter or cause of Premunire, should stand in force and effect. And that clause of the Statute of 1 & 2 Ph. & Mar. is this, That whosoever shall by any Proces obtained out of any Ecclesiastical Court, within the Realm or without, by pretence of any spiritual jurisdiction or otherwise, contrary to the laws of the Realm, inquiet or molest any person, &c. for any Mannors, &c. parcell of the possessions of any Religious House, &c. shall incur the danger of the Act of Premunire in Anno 16 R. 2.

25 H. 8. cap. 20.

See the Statute of 25 H. 8. which also hath reference to the said Act of Premunire, and is revived by 1 Eliz.

Trin. 29 Eliz. in Communi Banco, Rot. 747. Tho. Stoughtons case.

Thomas Stoughton Parson of N. in Suffolk, brought a Writ of Premunire against R. T. upon this Statute of 27 E. 3. for suing in the Court of Audience of the Archbishop of Canterbury, to impeach a judgement given in a Quare Impedit before the Justices of Assize in the County of Suffolk, &c. the defendant pleaded not guilty, &c. And this (omitting many other things for this matter) shall suffice. And now let us peruse the body of the Act.

¶ Trahe nulluy hors de realme.] Of this there is no question, being against the ancient law of the Realm alwaies in use; as by this Act appeareth. And this was a remedy for the first mischief.

¶ Ou des choses dont judgements fuer rendus, &c.] This branch prohibiteth all forain suits, viz. in the Court of Rome, &c. for any thing wherof judgement was given in the Kings Court. And this was a remedy for the second mischief.

¶ Ou que suent en autre Court a defaire ou impeacher les judgements rendue in le Court le Roy.] This is a remedy for the third mischief. For having by the second branch provided against forain suits to undo or impeach judgements in the Kings Court, this branch doth (as hath been said) extend to all Courts which proceed by the rule of another law, or draw the party ad aliud examen; and therefore this branch doth extend to Ecclesiastical Courts, to the Court of the Constable and Marshall, to the Court of the Admiralty, and to the Court of Equity proceeding in course of equity: for it had been to no effect to have provided against forain suits, which were troublesome, tedious and chargeable, and to have suffered the party to have attempted and prosecuted any thing at home within this Realm, to

to the weakness and dishonour of the King and his Crown, and all his subjects, and to the subversion of the Common law. And thus he will speak in the Court of Equity. This Court cannot proceed in course of equity after judgement at the Common law, for three reasons. First, for that it maketh the matter triable and determinable by the Common law as all other cases, viz. to a triall by witnesses, which (as hath been said) is contrary to the ancient law of the Realm, and against the Purview of this Statute. Secondly, after judgement the parties ought to have peace and quiet, for judicium sit in quantum juris dicitur; and if the party against whom judgement is given, might after judgement given against him at the Common law, goe into court of Equity for matter in equity, there either should be no end of suits, or every Plaintiff would leave the Common law, and begin in the Court of Equity, whither in the end he must be brought, and that should tend to the utter subversion of the Common law, as it is said in the Act. Thirdly, the Court of Equity in the proceeding in course of equity is no Court of record, and therefore it cannot hold plea of any thing whereof judgement is given, which is a judicial matter of record. And this is the ancient law at all times used, as this Act speaketh. As taking some few examples for many, both before and after this Statute.

In the case of Edmond Earl of Cornwall in Anno 6 E. 1. it appeareth, that after judgement given before Roger Loveday and Walter Winborn Justices of Oier and Terminer, against Walter Bishop of Exeter and his Tenants, the said Bishop procured the Bishop of Landaff in the Parish Churches of Cornwall and Devonshire to pronounce sentences of Excommunication by the sentence of the Archbishop of Canterbury (which sentence was had by the procurement of the said Bishop of Exeter) against all persons of what estate, degree or dignity soever, that dealt in the proceedings, &c. against the said Bishop and his tenants before the said Justices: and in this part of the record being in French, it is said, La Couron & la dignite nostre seigneur le Roy ne doit perestre estre Justice ne guyne, &c. Et les choses que sont passees en la court per judgement, ou en autre manner, ne devient estre en autre court retercees, &c. Out of this Record we may observe three things. First, what the ancient law of this Realm was, before the making of this Act. Secondly, that [en autre court] which are the words of this Act, was taken to be another Court within the Realm. Thirdly, that the mischief before this Act, was for suits in other Courts within this Realm, after judgements given in the Kings Courts. Read the whole Record, which beginneth thus, Cornub. Dominus rex mandat, &c.

And in 23 E. 3. there was a suit in the Court of Rome after judgement in the Kings Court, and in that Record it is said, In regis contemptum, & Coronam suam prejudicium, ac iudicii predicti enervationem manifestam, &c. Ac quod iudicia in curia Regis rite reddita frustra redderentur, nisi debitum sortirentur effectum.

A Plea, who wrote before this Statute, saith, Iudicia debent rata permanere, & firma consistere, usque ad condignam satisfactionem inviolabiliter observentur.

And as a Purview of the Common law in the Judicial Register, fo. 12. 35. 41, &c. it is often said, Es que in curia domini regis rite acta sunt, debent executioni demandari debent.

Now let us see what hath been done since the Act. The Statute of 4 H. 4. cap. 23. hath been recited before, which is a judgement of Parliament. A judgement was obtained by cotin and practices against all equity and conscience in the Kings Bench; for the Plaintiff retained by collusion an Attorney for the Defendant, (without the knowledge of the Defendant, then being beyond sea) the Attorney confessed the Action, whereupon judgement was given; the Defendant sought his remedy in Parliament, and by authority of Parliament power was given to the Lord Chancellor by advice of two of the Judges to hear and order the case according to equity: which proveth that the Chancellor could not do it of himself without higher Authority.

As an Injunction after Verdict at the Common law is to be granted in Chancery, and if the Lord Chancellor should grant an Injunction in that case, the

Judges

37 H. 6. 12.

Anno 6 E. 1. the Earl of Cornwall case. Lancaster in Theaur.

Mic. 13 E. 3. In Coramuni Banco, Rot. 40. Inter Johannem de Dingle & Mich. de Englis, Redf. 4 Fleta II. 6. ca. 36. Trin. 19 E. 3. Rot. 50. Coram Rege, John Boltons case. Mic. 19 E. 3. Rot. 16. & Rot. 29. Alan de Conesburghs case. F. N. B. 169. f. 20 E. 2. essoin 24. 21 E. 3. 40. b. 4 H. 4. ca. 23. c. Pasc. 5 E. 4. Coram Rege, inter Cobbe & Nore. 4 Rot. Parl. simile 3 H. 5. nu. 44. & 3 H. 6. nu. 22. c. 22 E. 4. 37.

1 Decemb.
21 H. 8. Art. 20.

Judges said that if the Chancellor imprisoned the party for breach of the Injunction, they would grant an Habeas corpus and deliver him.

Amongst the Articles preferred to the King by Sir Thomas Moore Lord Chancellor of England, and all the Privy Council, and by Fitz-James Chief Justice, and Justice Fitz-Herbert, against Cardinal Woolsey, one is in these words, [And the said Lord Cardinal hath examined divers and many matters in the Chancery, after judgement thereof given at the Common law, in subversion of your laws, and made some persons to restore again to the other party condemned that that they had in execution by virtue of the judgement of the Common law] which I have seen in parchment under all their hands, and is yet to be seen.

Doct. & Stud.
ca. 18. the book
of diversity of
Courts.

If judgements given in the Kings Courts should be examined in Chancery, before the Kings Council, or any other place, the Plaintiff or Demandant should seldom come to the effect of their suit, nor the law should never have end, &c. See the diversity of Courts ca. Chancery.

Mich. 8 & 9 El.
in the Kings
Bench.

Ralph Heydon Gent. was indicted of a Premunire upon the Statute of 27 E. 3. for procuring of Sir Nicholas Bacon, Lord Keeper of the Great Seal, to grant an Injunction in Chancery after judgement given in an Ejectione firme of lands in Hertfordshire. And the record saith, Quod predictus Radus machinatus est antiquas leges & consuetudines regni subvertere.

Trin. 21. El. in
Commun Banco
Rot. 319.

A writ of Premunire upon the said Statute of 27 E. 3. by Richard Beant against Richard Lloyd, for suing before the President and Council in Wales, after judgement given in the Court of Common Pleas, in an Action of debt for forty and two pound ten shillings, in subversionem legum antiquarum, &c.

Passch. 27 El. in
the Kings Bench.

Peter Dewle was indicted for procuring of Sir Thomas Bromly, then Lord Chancellor, to grant an Injunction in the Chancery after a Judgement given in an Ejectione firme.

Trin. 30 El. in the
Kings Bench.
Diversity of
Courts ca. Chan-
cery.

John Heal of the Inner Temple London Esquire, was indicted of a Premunire, for procuring a suit in Chancery after a judgement given at the Common law, contrary to the Statute of 27 E. 3. And the counsel of Heal took two exceptions: one, that the Court of Chancery was not within the Statute of 27 E. 3. another, that one of the parties to the suit in Chancery was named in one place by one name of baptism, and in another part of it by another. The Court resolved that the Court of Chancery was within the Statute of 27 E. 3. but found the other exception concerning misnaming to be true. And therefore they quashed the Indictment, but made a memorandum indorsed upon the back of the indictment, that it was overthrown for mistaking a name, and not for the matter.

Mid. 39 & 40 El.
See the Fourth
part of the Inst.
cap. Court of
Chancery.

Thomas Throckmorton exhibited a bill in the Chancery against Sir Moryl Finch after judgement given against him in the Court of Exchequer upon apparent matter of equity. Upon which Bill the Defendant demurred in law, & for that Sir Thomas Egerton then Lord Keeper inclined to rule over the demurrer, saying that he would not meddle with the judgement, but punish the corrupt conscience of the Defendant, in relieving the Plaintiff in equity; upon a petition to Queen Eliz. (who ever favoured the due proceeding of her laws,) she referred the consideration of the Demurrer to all the Judges of England; who hearing Counsel learned on both parts, and upon view of Precedents in the time of H. 8. and since of Injunctions granted after judgements, and finding very few of them to warrant that which had been affirmed, and none of them to be done by the advice of any of the Judges, they all, after divers hearings and conferences, and consideration had of the laws and Statutes of the Realm, unanimously resolved, that the Lord Keeper could not after judgement given relieve the party in equity, although it appeared to them that there was apparent matter in equity. And amongst others, the Judges gave this reason, that if the party against whom judgement was given might after judgement given against him at the Common law draw the matter into the Chancery, it would tend to the subversion of the Common law, for that no man would sue at the Common law,

law, but originally begin in Chancery, seeing at the last he might be brought thither, after he had recovered by the Common law; and thereupon they all certified, that the Demurrer was good, and that Sir Moyl Finch the Defendant ought not to answer.

An Information upon this statute of 27 E. 3. against Sir Anthony Mildmay, for that he and other Commissioners of Sewers did impeach a judgement in the Kings Bench: he purchased a pardon from the King, and pleaded it. Hil. 12 Jac. Regis Coram Rege.

See a Privy Seal bearing Teste 18 Julii, Anno Domini 1616. to the contrary, obtained by the importunity of the then Lord Chancellor being vehemently affraid. Sed judicandum est legibus; and no precedent can prevail against an Act of Parliament. And besides, the supposed Precedents (which we have seen) are not authentical, being most of them in foyn papers, and the rest of no credit.

¶ Eient jour contenant le space de 2 moys per garnishment a faire a eux, &c.] By this it appeareth that a Premunire lyeth as well for the party, as for the King, and they both may joyn in one writ.

* If the Defendant come not at the day, &c. by the express letter of the law judgement shall be given against him according to this Act. This suit need not be against them by original writ, but if the Defendant be In Custodia Marechalli, the suit may be against him by bill, because the end of the giving of the two months was, that they should have notice, which is satisfied, and therefore with agree the Precedents; and the Defendant cannot be sued in any other Court, when they are In Custodia Marechalli. See the statute of 18 El. cap. 5. but that statute extends to common Informers, and not when the suit is commenced by the party grieved.

* But if the Defendant appear and plead, and the issue be found against him, or if he demur in law, &c. judgement shall be given against him, that he shall be out of protection, &c. And so hath this statute been interpreted, and judgement given accordingly. Peruse well the words of this Act for this point, and see the book in 8 H. 4. 6.

By the statute of 38 E. 3. cap. 2. the Defendant ought to appear in person, and therefore he cannot appear by Attorney without a special writ out of the Chancery: and this Act doth bind as well those that are Lords of Parliament, as others.

¶ Avant le Roy & son Councell.] Here Councell cannot be taken, as most commonly it is, for his Judges of his Courts of Justice, who are said to be of his Councell for proceedings in course of Justice, because the Courts of Justice are hereafter in this Act named: neither doth it intend the Kings Privy Councell, but the King and the Lords of Parliament in Parliament, which is a court of Justice.

See the First part of the Institutes, Sect. 164. Veigne les Burgeses al Parlement. There is Commune Concilium, Magnum Concilium, Privatum seu continuum concilium, and Concilium Justiciariorum, le Councel des Justices.

¶ Ils, leur Procurators, Attornies, Executors, Notaries, & Mayntainers.] Note by this Act the Procurers, Attornies, Executors, Notaries, & Maintainers shall have the same punishment that the Principal shall have. Note in the statute of 2 R. 2. this word [factors] crept in, a word (derived a favendo) of a large extent, as it was construed in the reign of H. 8.

The Plaintiff may chuse whether he will make them all principals, or the one principal, and the other accessories: but the damages shall be severally taxed.

He that procures one to sue to the Court Christian, shall forfeit as much as he that sueth, and is principal as well as the other, and is in equal degree of Premunire: but if they both be indicted, the one of the act, and the other of the

44 E. 3. 7. 36.

39 E. 3. 7.

7 E. 4. 2.

27 H. 6. 5.

36 H. 6. 30.

* 43 E. 3. 6.

42 E. 3. 7.

2 R. 3. 17.

27 H. 6. 5.

22 H. 8. Tir.

Præm. Br. 1.

Tr. 39 E. 3.

Rot. 95. Coram

Rege. 39 E. 3. 37.

30 E. 3. 11.

44 E. 3. 36.

Forebys case.

48 H. 4. 6.

Lib. 11. fo. 34. b.

in Alex. Poulterers

case.

39 E. 3. 7.

9 E. 4. 2.

15 H. 7. 9.

F. N. B. 26. m.

27 H. 6. 5.

2 R. 3. 10.

The King is ar-

med with divers

Councils:

Stanf. pl. Con.

44. f. 44 E. 3. 7.

36 H. 6. 30.

42 E. 3. 7. 8 Rot. 2.

Prem. 12.

8 H. 4. 6. pl. com.

97. b.

procurement, and he that is charged with the procurement is found guilty, and the other by another enquest is found not guilty, judgement shall never be given against him which was indicted of the procurement, because he cannot be an offender but in respect of the offence of the other.

See Littleton
Sect. 195. and
the 1. part of the
Institutes the
same Sect.
Lib. 7. fo. 14. in
Calvins case.
25 E. 3. ca. 2.
See 5 El. ca. 1.

¶ **Hors de la protection le roy.]** By these words the persons attainted in a writ of Premunire are disabled to have any action or remedy by the Kings law or the Kings writs; for the law and the Kings writs are the things whereby a man is protected and aided, so as he that is out of the Kings protection, is out of the aid and protection of the law.

But by the Statute of 25 E. 3. it is provided, that he that purchaseth provisions to Abbies or Priories shall be out of the Kings protection, and that a man may doe with him as with the enemies of the King and his Realm, and that he that shall commit any thing against such provisions in body or goods or other possessions, shall be excused against all people.

34 H. 8. forfeit.
Br. 161.
Pasch. 21 El. resolu-
tion of the
Judges in Trud-
gyns case. Dier
manuscript.
Vide before.
25 E. 3. Verb. Et
soit assavoir.

¶ **Et leur terres, biens, & chateaux forfait au Roy.]**

This is intended of the lands that he hath in fee simple, or for life, which the Delinquent might lawfully forfeit, and not lands in tail: for tenant in tail shall forfeit only for term of his life, for that was all he could lawfully forfeit at the making of this statute, either in case of Treason or Felony. And so it was resolved by the Judges in the case of Trudgyn of Devonshire, who was attainted of a Premunire upon the Statute of 13 El. cap. 2.

Nota, This is a new kind of forfeiture given by this law, and is penal, and cannot by equity extend further then the records, and therefore this Act extendeth not to the forfeiture of Fairs, Markets, Rents charges, Rent seek, Warrens, Annuities, or any other hereditament that is not within this word [terre.]

16 R. 2. ca. 5.
Examples of
these are quoted
before.

¶ **Lour corps imprison, & rents al volant le Roy.]**

The greatness of these punishments shew the greatness of the offence.

It is to be observed, that the said Statute of 16 R. 2. is strictly penned against offenders. For first it extendeth to all persons of what quality or sex soever: the words be [if any] 2. To all Courts of what Jurisdiction soever, and whether holden by right or by wrong; In curia Romana seu alibi, which word (alibi) is a word of a large extent, as before it appeareth. 3. To all things whatsoever: [Where any thing,] which words be as general as can be. 4. Not only against the King, his Crown and dignity, but against the Kingdome also: against the King, his Crown and regality or Realm. 5. This Act extendeth not only to procurers, abettors, maintainers, counsellors, &c. which are known words in law, but to favourers, fautores, which word was largely extended in the reign of H. 8. Whereby it is to be observed how dangerous it is to bring new or unusual words into any Act of Parliament, especially into such as be so penned: for there it appeareth that Chas being a Parson of a Church, granted to the Cardinal an annuity, so long as he should be Legate, or decentius & sublimius se gereret in autoritate sua Legationis; which the Cardinal had by Bull, and paid to him ten marks in name of sealin; and he was adjudged a fauor. But such evasions were found out of this and other Statutes as were made against usurpations and encroachments upon the good and ancient Common law, as divers and many Statutes were made from time to time to meet with such evasions, which being many, (and others which concern the offence of premunire) we will but name, and leave the reader to peruse the same at large, wherein (as we conceive it) he shall find a great light by that which hath been said, viz. 25 E. 3. ca. 2. 25 E. 3. Stat. de provisionibus. 38 E. 3. ca. 2. 3. 4. 3 R. 2. cap. 5. 7 R. 2. ca. 12. 18 R. 2. ca. 15. 13 R. 2. Stat. ca. 2. 16 R. 2. ca. 5. 2 H. 4. ca. 3. & 4. 6 H. 4. cap. 1. 7 H. 4. ca. 6. & 8. 9 H. 4. ca. 8. 3 H. 5. ca. 4. 24 H. 8. ca. 12. 25 H. 8. ca. 19, 20, 21. 26 H. 8. ca. 15. 28 H. 8. ca. 10. 35 H. 8. ca. 12. Note, Queen Mary repealed

Vide Justice Spil-
mans Report.
Mic. 21. H. 8.
Cliffs case.

repealed all offences made to be in the case of Premunire since the first day of the first year of H. 8. but some of them are revived by the Statute of 1 El. cap. 1. But in all Quēn Maries time, the Statutes made concerning the offences of Premunire before the reign of H. 8. were neither repealed nor altered, but (as hath been said) allowed of in Quēn Maries time. 1 & 2 Ph. & Mar. ca. 8. 1 El. cap. 1. 5 El. cap. 1. 13 El. cap. 1, 2, 8. 27 El. ca. 2. 21 Jac. ca. 3.

And where the Statute of 25 E. 3. De Provisoribus provideth, that certain offenders against that Act shall, before they be delivered, make full renunciation, &c. because we desire that our student may in all things understand what he reads, It is to be known, that as well before that Statute, viz. in the reigns of E. 1. E. 2. as after, the form of renunciation was to this effect, I renounce all the words comprised in the Popes Bull to me made of the Bishoprick of A. (or the like) the which be contrary or prejudicial to the King our Sovereign Lord and to his Crown, and of that I put my self humbly in his Grace, praying to have restitution of the temporalities of my said Church, &c. Whereby it may appear what the law was in that case before 25 E. 3. And albeit these laws be very severe, especially against the Bulls, &c. of the Pope, and forain jurisdiction, and though Quēn Mary restored his Supremacy in such sort as hereafter appeareth, yet would she not repeal the said Statutes of Provisors and Premunire, but provided that they should stand in force. See the Statute of 1 & 2 Ph. & Mar. whereby it is enacted, That whosoever should by any process obtained out of any Ecclesiastical Court within this Realm or without, or by pretence of any spiritual jurisdiction or otherwise, contrary to the laws of this Realm, inquit or molest any person, &c. should incur the danger of the Act of Premunire made in the sixteenth year of the reign of King R. 2. &c. And by another branch in the same Act it is enacted, That all Bulls, Dispensations and Privileges not containing matter contrary or prejudicial to the authority, dignity or preeminence royall of the Realm, or to the laws of this Realm now being in force, and not in this present Parliament repealed, may be put in execution. And lastly, by the same Act it is declared and enacted, That neither any thing contained in the body of the said Statute or in the Preamble thereof, shall be construed or expounded to diminish or take away any of the liberties, privileges, prerogatives, preeminencies, authorities or jurisdictions which were in the Imperiall Crown of this Realm, or belonged to the same before the twentieth year of H. 8. and the Popes Holiness to have such authority, preeminence and jurisdiction as his Holiness used, or might lawfully have used by authority of his Supremacy, the said twentieth year of H. 8. within this Realm of England, without diminution or enlargement of the same; and none other. Whereby it appeareth how careful the State was in Quēn Maries time to preserve the Prerogative of the Crown, and the ancient laws of the Realm, and did at that time so cautiously restore the Supremacy of the Pope, secundum quid, but not simpliciter, and bounded his Supremacy within streight and legal limitations, as by the said Act appeareth.

See the Statutes which inflict the punishment of Premunire, viz. 2 R. 2. c. 12. 3 R. 2. cap. 3. 7 R. 2. cap. 12. 24 H. 8. cap. 12. 25 H. 8. cap. 19, 20. 1 El. c. 1. 26 H. 8. cap. 15. 28 H. 8. cap. 16. 1 & 2 Ph. & Mar. cap. 1. 8 El. cap. 1. 13 El. c. 2. 39 El. ca. 11. 27 El. ca. 2. See the Fourth part of the Institutes, cap. Chancery; the Articles at large against Cardinal Woolley, Artic. 7.

We have been the longer concerning cases of Premunire, first, for that they be matters of great weight and necessary to be known, and we wish that the offence may never be committed, And secondly, for that Master Stanford hath in effect but named a Premunire.

Dier Manuscrip.
Hil. 1 El. le case
de Christoforson
Evesque de Chel-
chester.

1 & 2 Ph. & Mar.
cap. 8. & 13.
* Nota.

Stan. pl. cor. 44. f.

CAP. LV.

Of Prophecies.

48 H. 8. cap. 14.

1 E. 6. cap. 24.

Nota.

1 Mar. stat. uni-

cum, Sessione

prima.

5 Eliz. cap. 15.

Milius imperanti

melius pareretur.

* Nota.

The Stat. Act was

made, 3 & 4 E. 6.

ca. 15. expired.

Prophecies upon declaration of Arms, Shields, Pages, Cognissances or Badges, were made felony without the benefit of Clergy: but this Act is thence repealed by general words of all Felonies made by any Statute since the first year of H. 8.

In Anno 3 Eliz. a more moderate Statute was made against Prophecies by Writing, Singing, or other open Speech or Deed, by the occasion of any Arms, Shields, Beaks, Badges, or other like things accustomed in Arms, Cognissances or Badges; or by reason of any time, year or day, name, bloodshed or war, & to the intent thereby to make any rebellion, insurrection, disturbance, loss of life, or other disturbance within this Realm or other the Queens Dominions. For the first offence, imprisonment of his body by the space of a year without bail, and forfeit to the Queen and Informer ten pounds. And for the second offence, imprisonment during life without bail, and forfeit to the Queen all his goods and chattels, real and personal: but he must be theretofore impeached or accused within six months next ensuing the offence by him done. A just and necessary limitation, and the rather, for that the offence may be committed by bare words; This offence is to be heard and determined before Justices of Assize, Justices of Oyer and Terminer, and Justices of Peace.

See hereafter the Chapter of Heresies, and the Second part of the Institutes, Writ. cap. 33. We that hath read out Histories shall find what lamentable and fatal events have fallen out upon vain Prophecies carried out of the inventions of wicked men, pretended to be ancient, but wisely framed to deceive true men: and foolish, vain credulous and inclinable our countrymen in former times to them have been, we will set upon the truth concerning the same.

Certain it is, that to foretell of things to come, is a prerogative appropriated to the Holy Ghost, and that the Devil cannot practice, foretell of things to come; which notwithstanding, S. Austin did sometime hold that he could, but afterwards justly retraced it in these words, Rem dixi oculis sumam audaciora asserere quam debui, &c. certissimum est Damones non prescire.

But for the predictions and foretellings of the Sibyls, being Gentiles, so long before the Incarnation of our Saviour Christ, and more directly and particularly of those high mysteries of the Incarnation and Passion of Christ, the coming of Antichrist, the subversion of Rome, and the end of the world, they are by the true Prophets of Almighty God, who spake by the Holy Ghost, well discovered, that while the Church was in her Cradle, these predictions were invented and sattered upon the Gentiles, to the intent to make the doctrine of the said high mysteries of the Gospel the more credible amongst the Gentiles. And if any such predictions had been by the said Sibyls, out of question those great lights of Nature amongst the Gentiles, Plato, Aristotle, Theophrastus, or some other of those great Philosophers, that with great alacrity dived into the secrets of all kinds of learning, would have found them out and made some mention of them. But besides the said discovery, such predictions by the Gentiles and Heathen persons are against the word of God.

No predictions either of the time of the end of the world, or that it is at hand, are not lawfull. For the first, see the first of the Acts, It is not for us to know

August. in lib.
Retract.

4 Casaubon.

Exercit. 1. ad ap-

paratum Anna-

lium, cap. 10.

b Ephes. c. 3. v. 9.

Col. cap. 1. v. 26.

Rom. ca. 16. v. 25.

e Acts ca. 1. v. 7.

Mar. 24. 36.

Mark 13. 32.

know the times and seasons which the Father hath put in his own power, &c. For the second, for the Second Epistle to the Thessalonians, I beseech you, brethren, &c. that you be not shaken in mind or troubled, &c. as though the day of Christ were at hand: let no man deceive you by any means.

We have the rather said heretofore thus much, for that we have heard others men boldly & confidently upon their numerall calculation to have erred herein.

CAP. LVI.

Of Approver.

Approver or Approver, in Latin Probator, is a person indicted of Treason or Felony in prison for the same, and not disabled to accuse: he may upon his arraignment, before any plea pleaded, and before competent Judges confess the indictment, and take a corporal oath to reveal all treasons and felonies that he knows, and pray a *Coroner*, before whom he is to enter his appeal or attestation against all those that are participes criminis, or of his society in committing of treason or felony contained in the Indictment, those partners being within the Realm: and if upon his appeal all those partners be convicted, the King ex merito justicie is to pardon him. But it is in the discretion of the Court either to suffer him to be an Approver, or after his approvement to respite judgement and execution until he hath convicted all his partners.

A Prover.] He is by Bract called Probator, by Britton Provor, by the *Quirroz* Prover and Approver: and his name putteth him in mind of his duty, viz. to prove and approve his attestation or appeal in every point, for any failure of truth disableth him in omnibus. And as he must affirm the truth, and the whole truth, before the Coroner and his appeal: so in the rehearsal of the appeal before the Justices it must agree both the appeal, 25 Aff. p. 19. & *Don ubi supra*. In one Record I find him called Appellator.

[Person.] This extendeth not to a Peer or Lord of Parliament, for it is against Magna Charta, cap. 29. for him to peer a Coroner.

A man attainted of treason or felony cannot become an Approver, because (as the book saith) he is *Hors de la ley*. Also though he be indicted, yet if he be out of prison, he cannot approve.

The *Quirroz* saith, that Widemen, Infants, Idiots, Lepers, or Professors in order of Religion, or Clerks, or persons attainted of felony, or Non compos mentis, cannot be Approvers: and Stanford addeth men above the age of 70, or maimed, because some of them cannot take an oath, and none of them can wage battell.

[Indicted.] For in any appeal either by *Writ* or *Will* the Defendant shall not become an Approver: and before indictment no person can approve, because if his approvement be false, no judgement (whatsoever he confessed) can be given against him, unless he be indicted, and no judgement can be given against him if his appeal be false, but of the offence contained in the Indictment, and so are the books to be understood.

If one be indicted and approve, if after an appeal be sued against him, the approvement ceaseth.

[Of treason or felony.] And that is only of that treason or felony that is contained in the Indictment, as hath been said. *De Trin.* 3 H. 4. Rot. 19. Coram Rege Hertford. Probator in duello devicit appellat', de alia prodicione,

pro

2 Thess. ca. v. 1, 2.

Parl. 28 E. 1. item: Nota, for confronting.

49 H. 5. cor. 440.

21 E. 3. 18.

19 H. 6. 47.

2 H. 7. 3.

12 E. 4. 10.

3 H. 6. 50, 51.

61 H. 5. cor. 421.

3 H. 6. 50, 51. in

Bankle Roy.

Pasch. 2 H. 4.

coram Rege pl. 8.

c. 11 H. 6. 29. b.

& 34. b.

4 Bract. lib. 3.

fo. 122. b. & 152.

&c.

Britton fo. 7. 11.

17. 48.

Mirr. cap. 1. §. 13.

cap. 3. excc. al.

provers, cap. 3.

c. 12 E. 3. 41.

21 H. 6. 34.

22 E. 3. cor. 450.

26 Aff. pag. 19.

f. Pasch. 2 H. 4.

coram Rege. 8.

51 Aff. pl. 17.

19 E. 2. cor. 387.

19 E. 3. lib. 443.

17 E. 3. 14.

21 E. 3. 18.

h. Mir. ca. 1. §. 13.

Stanf. pl. cor.

140. d.

143 Aff. 39.

15 E. 3. cor. 135.

11 H. 7. 5.

k. 25 E. 3. 39.

18 H. 5. cor. 442.

19 H. 6. 4.

12 E. 4. 10.

8 H. 6. cor. 121.

19 E. 2. cor. 387.

pro quo devictus suspenditur, decapitatur, & quarantia sua dividuntur. Et simile ibid. Anglia.

46 H. 6. ubi sup.
21 E. 3. fo. 18.
V. 3 H. 6. 51, 52.

¶ **In prison.]** Albeit he be indicted, yet if he be at large, and not in prison, he cannot approve, as before is said.

6 Bract. ubi sup.
9 H. 4. 1.
2 H. 4. 19.
44 E. 3. 44.
Lib. 10. fo. 76. b.

¶ **Competent Judge.]** As Justices of the Kings Bench, Justices of Oier and Terminer, and of Gaol-delivery; but not Justices of Peace, because they have no authority by their Commission to assign a Coroner. And by the same reason the Lord High Steward of England cannot assign a Coroner in case of treason or felony.

12 E. 4. 10.

21 H. 6. 34, 35.

¶ **Corporal oath.]** Though the Oath be general of all treasons and felonies, yet in course of law no approbment can be but of the offence contained in the Indictment, as hath been said. And this Oath and the accusation of himself make his appeal or accusation of another of the same crime to amount in law to an Indictment.

40 Aff. 39.
10 E. 4. 14.

¶ **Particeps criminis.]** For it cannot be of another treason or felony then is contained in the Indictment.

1 E. 3. 17.
1 Aff. p. 2.

¶ **Within the Realm.]** For if it be out of the Realm, it wanteth trial, and therefore the accusation or appeal not to be allowed.

26 Aff. 19.
8 H. 5. cor. 459.
21 H. 6. 34.
12 E. 4. 10.

¶ **Ex merito justitiae.]** And the reason is, for that he rideth the country of wicked and hurtfull misdoers, whereby the Kings peace is kept, and the Subject enjoyeth his own in quiet. And therefore the King doth in the mean time give him wages.

Mich. 39 E. 3. coram Rege Rot. 97.
Suff.

A man became an Approver and appealed five, and every of them joined battel with him; Et duellum percussum fuit cum omnibus, & Probator devict omnes quinque in duello, quorum quatuor suspendebantur, & quintus clamabat esse clericum, & alleceatur; & Probator perdonatur: so as the Approver did and ought to fight in that case with all the Appelles. But if there be two or more Approvers against one man of one felony, and he join battel with them all, and vanquish the first, he is acquitted against the other. Concerning the Proces upon an approbment, and other incidents, you may read in Dr. Justice Stanford, which need not here to be rehearsed.

7 E. 3. 7.
11 H. 4. 91. b.
Of battel, see more here, Cap. Single combur, and the second part of the Institutes, Westminster. 1. cap. 40.

* If the Appelle join battel, or plead not guilty, and after the King pardoneth the Approver, the Appelle shall be discharged, and shall not be arraigned at the suit of the King.

* 47 E. 3. 5.

Stanf. pl. cor. 142.

¶ **Convicted.]** The Appelle may chuse either to wage battel with the Approver, or to put himself upon the country; and if the Appelle be found guilty by verdict, it serveth as well for the Approver, as if he had been overcome by battel. And therefore the Book in 19 H. 6. 35. is misprinted, or misreported: and the note of Firzh. in abridging the case, viz. Coron. pl. 6, in the end, is against law. Vid. Rot. Parl. 17 E. 3. nu. 36.

19 H. 6. 35. a.

Rot. Parl. 17 E. 3. nu. 36.

Nota how the conclusion of the appeal of felony ought to be, when the Plaintiff is mayhemed and cannot make tryall by battail.

* See before c. 1. high treason, fo. 6.

1 H. 4. ca. 14. Glanv. li. 14. c. 1.

Bracton lib. 3. fo. 118, 119. Britton cap. 8. & 29. Fleta lib. 1. ca. 21. The Mirror cap. 2. §. 11. Pat. 25 E. 3. part. 1. m. 16.

Mich. 4 H. 4. coram Rege Rot. 22. &c. 8 H. 6. ca. 10. P. N. B. 113. Lib. Intrin. Rast. fol. 1222.

corpus suum sicut curia consideraverit. Ricus dicit quodd non potest pugnare contra predictum Johannem, eo quod ipse mahematus est in humero suo dextro. Et predictus Johannes petit judicium desicut predictus Ricus appellando ipsum opulit distratiocinare predictum Robertum verus ipsum tanquam felonem prout cur confider per corpus suum, & nullam fecit mentionem de aliquo Mahemio, unde petit judicium de appello isto. Et ideo considerat est tam ad calumpniam predicti Henr. & aliorum, quam predicti Johannis, quod appellum eius nullum. Set pro rege inquiretur rei veritas, &c.

* Where lay an appeal of high treason by the Common law, either in Parliament before the statute in 1 H. 4. ca. 14. or in such of the Kings Courts as have jurisdiction thereof triable by battail or verdict: and this appeareth by all our ancient Authors, and divers records, and so in Bracton fo. 119. 2. What pleas the Defendant in the appeal of treason may have, to disable the Plaintiff to maintain his appeal, see Fleta ubi supra, & Britton ubi supra.

Bracton lib. 3. fo. 118, 119. Britton cap. 8. & 29. Fleta lib. 1. ca. 21. The Mirror cap. 2. §. 11. Pat. 25 E. 3. part. 1. m. 16. Mich. 4 H. 4. coram Rege Rot. 22. &c. 8 H. 6. ca. 10. P. N. B. 113. Lib. Intrin. Rast. fol. 1222.

CAP. LVIII.

Of Treasure trove.

Thesaurus inventus.

Custum. de Nor. cap. 12.

Treasure trove is when any gold or silver, in coin, plate or bullion, hath been of ancient time hidden; wheresoever it be found, wherof no person can prove any property, it doth belong to the King, or to some Lord or other by the Kings grant, or prescription.

The reason wherfore it belongeth to the King, is a rule of the Common law, That such goods wherof no person can claim property belong to the King, as wrecks, strays, &c. Quod non capit Christus, capit Fiscus. It is anciently called Kyndaringa, of finding the treasure. And now let us peruse this description.

* Inter leges H. 1. cap. 11.

[Gold or silver.] For if it be of any other metall, it is no treasure: and if it be no treasure, it belongs not to the King, for it must be Treasure trove.

It is to be observed, that beys of gold and silver in the grounds of subjects belong to the King by his prerogative, for they are royall mines, but not of any other metal whatsoever in subjects grounds.

Pl. Com. In case de Mines per totum.

Vid. Bract. li. 2. fo. 222. Auri fodina, & argenti fodina.

Fleta lib. 4. ca. 19. Rot. Parl. 3 R. 2. nu. 42.

27 Ass. p. 19.

4 Bract. l. 1. fo. 10. li. 3. 120.

Britton fo. 3. b. 7. b. 26. b. 71. b.

Mir. ca. 1. §. 3. & §. 13. ca. 3. §. isto.

Glanv. l. 1. ca. 1. li. 14. ca. 2.

b In bundell Inquisit. 32 E. 3. in Abbacia Sancte Martine Eborac.

Bract. ubi supra. Non refert in quo loco hujusmodi Thesaurus invenitur. c 22 H. 6. Cor. 446.

4 Bract. ubi supra, and the other ancient Authors agree thereunto. c Glanv. li. 1. c. 1. li. 14. ca. 2. 8 E. 3. ibid. 241.

[Wheresoever.] Whether it be of ancient time hidden in the ground, or in the roof, or walls, or other part of a castle, house, building, ruines, or elsewhere, so as the owner cannot be known.

[Whereof no person can prove any property.] For it is a certain rule, Quod thesaurus non competit regi, nisi quando nemo scit qui abscondit thesaurum.

[Of ancient time hidden.] Est autem thesaurus vetus depositio pecuniarum, &c. cujus non erat modo memoria, adeo ut jam dominium non habeat.

[Belong to the King.] Wherof ancient time it belonged to the

finder,

Cap. 59, 60. Of Wreck. False tokens, &c.

133

finder, as by the said ancient Authoꝝ it appeareth. And yet I find that before the Conquest, Thesauri de terra domini regis sunt, nisi in Ecclesia vel Coemeterio inventiantur; & licet ibi inveniantur aurum, regis est, & medietas argenti est medietas Ecclesie ubi inventum fuerit, quocunque ipsa fuerit, vel dives, vel pauper.

¶ By the Kings grant or prescription. 21 H. 6. tit. Prescription. 4. 22 E. 3. Cor. 241. 1 H. 7. 33. 9 H. 7. 20. 46 E. 3. 16. Stanf. pl. Cor. 39. b. Lib. 5. fo. 109. b.

¶ The punishment of him that concealeth, &c. it] It appeareth by Glanvill, and Bracton also, that occultatio thesauri inventi fraudulosa was such an offence as was punished by death. But it hath been resolved, that the punishment for concealment of Treasure trove is by fine and imprisonment, and not * of life and member.

Glanvil ubi sup. Bracton and the other Authoꝝ, ubi supra.

* 22 Aff. p. 99.

¶ To whom the charge thereof belongeth.] It belongeth to the Coroner, as appeareth by the statute de officio Coronatoris, Anno 4 E. 1.

The ancient Authoꝝ, ubi supra, agree herunto.

C A P. LIX.

Of Wreck.

SEE the Second part of the Institutes, W. 1. cap. 2. and the exposition upon the same.

C A P. LX.

Of false tokens, or letters in other mens names.

IF any person falsly and deceitfully obtain into his hands any mo-
neys, goods, chattels, Jewels, or other things of any person or per-
sons, by colour or means of any false or privy tokens, or counter-
feit letters made in any other mans name, &c. he shall suffer such cor-
rection by punishment of his body, setting upon the pillory, or other
corporall pain (except pains of death) as shall be to him adjudged by
the person and persons before whom he shall be convicted, with a sa-
ving to the party grieved by such deceit, such remedy by way of
Action or otherwise as he might have had by the Common law.

33 H. 8. cap. 1.]

Here it is to be observed, that upon this Statute, for this offence the offender cannot be fined, but corporall pain only inflicted.

T. CAP.

CAP. LXI.

Of Theftbote.

Sent. Wall. Ann 6
12 E. 1. Vol. Mag.
Chart. part. 1. fol. 6.
See Rot. claus.
An. 1. E. 1. m. 7.
42 A. 1. p. 5.
Mir. ca. 2. §. 12.
3 E. 3. Cor. 353.
Stanh. Pl. Coron.
40. b.
42 A. 1. ubi supra.

Theftbote (described by Act of Parliament) est comenda furti capta sine consideratione Curie domini regis: and so much the word significeth, bote being taken for amends; theftbote, that is, amends for theft.

This offence is more then imprisonment of felony, for that it is not a concealment of his bare knowledge only; but Theftbote is when the owner not only knowes of the felony, but taketh of the thief his goods again, or amends for the same to favour or maintain him, that is, not to prosecute him, to the intent he may escape: but in that case, if he receiveth the thief himself, and aid and maintain him in his felony, then is he accessory to the felony. And so note a diversity, quando proprietarius recipit latrocinium, & quando latorem. But if a man take his goods again that were stolen, it is no offence, unlesse he favour the thief, as is aforesaid.

3 E. 3. Cor. 353.

* See before in the chapter of Imprison of treason, ca. 3.
Mir. ca. 1. §. 17.
Britton fo. 33.
* That is stolen cloth.

The punishment of Theftbote is ransome and imprisonment: and seeing the punishment of Theftbote, which is greater then concealment of felony, is but ransome and imprisonment, it standeth with reason, that the punishment of * imprisonment of felony should be but fine and imprisonment. Theftbote is sometimes taken pro ipso latrocinio, for the thing it self stolen from you.

You shall read in ancient Authors of Redoubbers, Addoubors, derived of the French word addoubear, they are in Law patchers, botchers, as members of a patell, that take * theftbote of cloth (and change it into another fashion) and are dwelling out of Burghs and Cities; because in those days burghs and cities were so well governed, as such offenders were soon discovered: for they were not then commended, for that they were populous, but for that the Governors were prohibent in preventing of offences.

CAP. LXII.

Of Indictments.

See the 1. part of the Institutes, sect. 194, 195.

Holcrofts case.
Artic. super Chart.
ca. 10.
The same was again resolved in Wrotes case, ubi supra.

Concerning Indictments we have spoken somewhat in the First part of the Institutes, Sect. 194, 208. And you may read in my Reports many resolutions concerning Indictments, viz. Lib. 4. fo. 40, 41, 42, & c. lib. 5. fo. 120, 121, 122, 123. li. 7. fo. 5, 6, 10. li. 8. fo. 37, 38, 37. li. 9. 62, 63, 116, 118.

We will now add one point advanced in the case between Burgh and Holcroft before mentioned in the Chapter of Appeals, which was, that where it is provided by the Statute de Artic. super Chartis cap. 9. En cas del mort del home (deins le verge) ou office del Coroner appent as views, & enquest de ceo faire, soit mande al Coroner del pais que ensemblement oye le Coroner del hostel le Roy face loffice que appent, &c. And in that case one man was Coroner both of the Kings house and of the County, and the Indictment of manslaughter was taken before him as Coroner both of the Kings house and of the County. And it was adjudged that the Indictment was good, because the mischief expressed in the statute was remedied, as well when both offices were in one person, as when they were in others: and therefore in this case the rule did hold, Quando duo jura concurrunt in una persona, æquum est ac si esset in diversis.

Richard

Richard Weston Peoman, late servant of Sir Gervase Elwys, A lieutenant of the Tower, and under the Lieutenant Keeper of Sir Thomas Overbury then prisoner in the Tower, was indicted, for that he the said Richard the 9 day of May An. 11 Ja. Regis, in the Tower of London, gave to the said Sir Tho. Overbury poison called Roseacre in broth, which he the said Sir Thomas received; Et u. idem Rich. Weston praefatum Tho. Overbury magis celeriter interficeret & murraret, 1 Junii An. 11 Ja. Regis supradicti, gave to him another poison called White Arsenick &c. and that 10 Junii An. 11. suprad. he gave him a poison called Mercury sublimat in Warts, ut praedict. Tho. Overbury magis celeriter interficeret & murraret: and that a person unknown in the presence of the said Richard Weston, and by his commandment and procurement, the 12 day of Sept. an. 11. supradict. gave to the said Sir Thomas a clyster mixt with poison called Mercury sublimat, ut praedictum Thomas magis celeriter interficeret & murraret: Et praedictus Thomas Overbury de sepealibus venenis praedictis, & operationibus inde, a praedictis sepealibus temporibus, &c. graviter languebat usque ad 15 diem Septemb. Anno 11. supradicto, quo die dictus Thomas de praedictis sepealibus venenis obiit venenatus, &c. And albeit it did not appear of which of the said poisons he died, yet it was resolved by all the Judges of the Kings Bench, that the indictment was good; for the substance of the indictment was, whether he was poisoned or no. And upon the evidence it appeared, that Weston within the time aforesaid had given unto Sir Thomas Overbury divers other poisons, as namely the powder of Diamonds, Cancharides, Lapis Cauticus, and powder of Spiders, and Aquas foris in a clyster. And it was resolved by all the said Judges, that albeit these said poisons were not contained in the indictment, yet the evidence of giving them was sufficient to maintain the indictment; for the substance of the indictment was (as before is said) whether he were poisoned or no. But when the cause of the murder is laid in the indictment to be by poison, no evidence can be given of another cause, as by weapon, burning, shooting, or other cause, because they be distinct and several causes: but if the murder be laid by one kind of weapon, as by a sword, either Dagger, Stiletto, or other like weapon is sufficient evidence, because they be all under one Classis or cause. And afterwards, Anne Turner, Sir Gervase Elwys, and Richard Franklyn a Physician, (partakers of the poisons) were indicted as accessories before the said Court: And it was resolved by all the said Judges, that either the proofs of the poisons contained in the indictment, or of any other poison, were sufficient to prove their accessories: for the substance of the indictment of them as accessories was, whether they did procure Weston to poison Sir Thomas Overbury: and because that not only Anne Turner and Richard Franklyn, but some of the degree of Nobility were indicted as accessories in another County, viz. in the County of Midd. divers notable points were resolved upon the statute of 2 E. 6. First, if the Accessory be in the County of Midd. where the Kings Bench is, and the principal did the felony, &c. in another County, that the Court of the Kings Bench is within the words of that Act, viz. (and that the Justices of Gaol-Delivery, or Oier and Terminer, or two of them, &c.) for the causes and reasons given in the Lord Zanchers case, Lib. 9. fo. 117, 118, &c. Secondly, if the Indictment be taken in the Kings Bench, then the Justices shall not write in their own names, quia placita sunt coram Rege. Thirdly, others precedents were shewed where the Accessory was in the County of Midd. where the Kings Bench sat, and the principal was attainted in another County, that the Justices of the Kings Bench have removed the Record of the attainder of the principal before them by Certiorari, and so it was done in the Lord Zanchers case, ubi supra. The like precedent was shewed in a case where the principal was attainted in the County of Wroth, and the Accessory was in Midd. and the Kings Bench sitting there, the Justices of the same Court removed the attainder before them by Certiorari. Fourthly, it was resolved, that the Lord Steward of England, who is a Judge in case of High Treason or felony committed by any of the Peers of the Realm, is within these words, Justices of Gaol-del-

Sir Tho. Overburies case.
Mich. 13 Jac.
See before cap. 7.
Of murder, none of this case.

Vide lib. 9. fo. 67.
Mackallies case
Acc.

2 E. 6. cap. 24.

39 H. 6. 42.
33 Afl. p. 7.

livery, as Oier and Terminer, because he is a Justice of Oier and Terminer; for his authority is by Commission, and the words of his Commission be after divers recitals, *Es superiende audiend, examinand, &c. respondere compellend, &c. hoc debet vermand*: so as he hath power to hear and determine. And where the words be [or any two of them] that is to be intended; where there be two or more Justices; and yet where there is but one, it extendeth to him. As the Statute of Merton cap. 3. power being given to the Sheriff in case of Redituſion, the words be, *Assumptis tecum Coronatoribus placitorum Coronæ, &c.* in the Plural number: And yet where there is but one Chamberlain in the County, the Statute extendeth thereunto, and the Sheriff shall take that one. Also the words of the Statute are further, That then the Justice of Gaol-delivery or of Oier and Terminer, or other there authorized: within which words [or other there authorized] the Lord Steward is included. Finally, if the Record of the attainder were by Writ of Certiorari removed out of London into the Kings Bench, then there arise another doubt upon the said Statute; if afterwards any proceeding should be had against any Peer, so that the words of the Statute be, The Justice, &c. shall write to the Custos Rotulorum or Keeper of the Record where such principal shall hereafter be attainted; and the attainder in this case was in London, and the Kings Bench was in Middlesex: so as if the Record should be removed into the Kings Bench in Middlesex, the Record should not be where the attainder was had, and consequently the Lord Steward could not write to the Kings Bench. And therefore to prevent all questions, it was resolved, That in this case of the Lord Steward, no Certiorari should be granted, but a special Writ should be directed according to the words of the said Act to the Commissioners of Oier and Terminer in London, to certify whether the principal was convicted or acquitted: and they make a particular Certificat accordingly, so as the Record of the attainder of the principal viz. notwithstanding that Certificat, remain with the Commissioners of Oier and Terminer in London; so as if any further proceeding should be had, the Lord Steward might write to them, as after he did in the case of R. Earl of S. and F. his Willfr.

And it is to be observed, that the ancient wall of London (a mention whereof doth yet remain) extendeth through the Tower of London; and all that toyley is on the West part of the wall is within the City of London, viz. the parish of All Saints Barking, in the Ward of the Tower of London; and all that is on the East part of the wall is in the County of Middlesex; and the Chamber of Sir Thomas Overbury, which is within the Tower on the West part of the said wall, and therefore was on the side within the City of London.

And where it is provided in many Acts of Parliament, ¹ Records, and ² Book-cases, that he shalbe called put any man to answer, but he must be appoynted by Indictment, ³ Presentment, or other matter of Record: And it is, in Pleas of the Crown, in other criminal offences, ⁴ Amittances, &c. principally by concerning others, or the publick; there the King by law must be appoynted by Indictment, ⁵ Presentment, or other matter of Record; but the King may have an Action for such wrong as is done to himself, and whereof none other can have any Action but the King, without being appoynted by Indictment, ⁶ Presentment, or other matter of Record, as a ⁷ Quare in pedit, ⁸ Quare incumbra vii, a ⁹ Writ of ¹⁰ Assumpsit, ¹¹ of Debt, ¹² Return of Writers, ¹³ Eleazar, ¹⁴ Scire fac. per repeler parent, &c.

a Mag. chart. c. 29.
 5 E. 3. cap.
 25 E. 3. c. 4. stat. 5.
 28 E. 3. cap. 3.
 37 E. 3. cap. 18.
 38 E. 3. cap. 9.
 42 E. 3. cap. 3.
 b Rot. clauf.
 18 H. 3. m.
 Rot. Parl. 15 E. 3.
 nu. 9; 10. & 15.
 42 E. 3. nu. 29.
 Sir John A Lees
 calc.
 17 R. 2. nu. 37. 2 h
 per Knivet. 2 E. 3.
 Brev. 916. c 17 E.
 b 39 H. 6. 16. 1 H.
 k 16 E. 3. Brev. 65

CAP.

6 AP. LXIII.
Of Councill learned in Pleas

WHere any person is indicted of Treason or Felony, and pleadeth to the Treason, or Felony, notwithstanding, which words is the fact best known to the party, it is holden that the party, in that case shall have no count to give in evidence, as alleged in the matter in dispute: but inasmuch as ex facto jus oritur, it is necessary to be explained, what matters upon his arraignment, or after not guilty pleaded, he may allege for his defence, and pray counsel learned to advise the same in form of the same.

And first, upon the arraignment what advantage he might take in case of High Treason by the common law? For he for condemning the death of the King, he may allege, that in the Indictment there is no felony overt proven. As yet there is no particular act sufficient in Law, by the Statute. For it is to be observed, that in no case the party arraigned of Treason, Polony's counsel learned generally, did plead these three things, and now did not. A third now, and

Secondly, in case of Wigg I reason by force of any Statute, he may allege, that the Indictment being grounded upon a Statute, the Statute is either mistaken or not pursued.

³ Thirdly, of what matters he may take advantage equally concerning them both. He may allege, that there was not at the time of the Violament of Hugh

fourthly, of what matters he may generally take advantage in all cases of

Reason 3. He may allege, that the offence is not certainly alleged in respect of the matter, time and place, so that he is not rightly named, or hath not a right addition, or that the offences were done before the last general pardon.

Fifthly, after he hath pleaded not guilty, what advantage he may take upon the evidence. He may allege, that he ought to have two lawfull witnesses in case of Death & reason, to prove the fact against him. *Halmoes* 230. 231. 232.

Rightly, he may take advantage in arrest of judgement, if the verdict be found against him, that the trial came not out of the right place: as it fell out in Arund.

deals case contrived by a Jury of willfull murder; he informed the Court, that the Jury that tried him came out of a wrong place, and thereupon he had Counsel learned assigned him; who indeed found that the Verdict was mistaken,

See before cap. 2.
Petit treason,
fo. 29, 34.
9 E. 4. 22.
Stanf. pl. cor.
131. b. otherwise
it is in an appeal
which is the suit
of the party.

I.

1 H. 7. 22

3.

3

10

5

4

Lib. 6. fo. 14
Arundels cat

9 E. 4. 32.

Scarf. ubi su

7 H. 4. 34. 3

See before fo

Ror. claus.

14 E. 2. 17.2

Octob.

CAP.

III XI CAP. LXIV
Of Principal and Accessory.

A best Justice Stanford hath well collected the Books concerning Principal and Accessory, yet diverse desiderata; and necessary it is, that some things touching the same should be added, which are here necessary to be known.

It is a fore Rule in Law, that in alia prodicione nullus potest esse accessorius, sed principalis solummodo. This rule being well understood, will open the reason of others cases which yet are involved in darkness.

High Treason is either by the Common law, or by Act of Parliament: we will set down examples (which ever do illustrate) of both.

A, doth counterfeit the Kings coin, viz. Shillings, and C, knowing the same both receive A. and comfort and aid him: this counterfeiting is High Treason by the Common law in A. as hath been said; and yet it hath been held that in this case C. hath not committed Treason: for, say they, in case of felony, a receiver of a felon after the felony done, knowing him to be a felon, is no Principal, but an Accessory; and for that there is no Accessory in Treason, therefore C. in the case before committeth no Treason: for then in judgement of law he must be a counterfeiter of the Kings coin within our Statute of 25 E. 3. which he is not: and therefore they say, this is Casus omnis, and not within any of the Clauses or Heads of the said Act of 25 E. 3. But all agree, that procurers of such Treason to be done before the fact done, if after the fact be done accordingly, in case of Treason, are Principals; for that they are participes criminis in the very act of counterfeiting.

But saving reformation we hold, that if any man committeth High Treason, and thereby becometh a traitor, if any other man knowing him to be a traitor, doth receive, comfort and aid him, he is guilty of treason, for that there be no Accessories in High Treason. And so it was resolved in the case of Abingdon, who received, comforted and aided Henry Garner Superior of the Jesuits, knowing him to be guilty of the Powder Treason, and accordingly Abingdon was indicted and attainted of High Treason. Hal. 7. Pl. Coron. 1690.

And where it is said, that the said offence in Conyers case was misprision of treason, that cannot be, because there was a consent, and not a concealment only: otherwise, High Treason being the highest offence should have more favour than felony: for the receiver and comforter in case of felony is punished by death, and so is not he that committeth misprision of treason. And lastly, this is no new treason, but a partaking and a maintaining of the old.

In case of felony there are Principals and Accessories, and Accessories be of two sorts, either before the offence be committed, or after. See the Second part of the Institutes, W. 1. c. 14. And concerning this there be also certain Rules.

Nullus dicitur felo principalis, nisi actor, aut qui præsens est abettans, aut auxilians: actorem ad feloniam faciendam. But this Rule hath his exception: for in case of poisoning, if one laeth poison for one, or infuse it into Broth, or the like, albeit he be not present when the same is taken, and either the party intended, or any other is poisoned, yet is he a principal: and in that case both the principal and procurer or accessory may be absent. See the Books above said for accessories before the felony committed, and where, and in what manner the procurement shall be said in law to be pursued: the learning whereof is so plainly set down, as the same need not herein to be repeated. Nullus dicitur Accessorius post feloniam, sed ille qui novit Principalem feloniam fecisse, & illum recep. a vic

Mich. 12 & 13
Eliz. 196. Dier,
Conyers case.

Dyer 296. a. (25)

419 H. 6. 47.
3 H. 7. 10.

Stanf. fo. 3. See
before cap. Trea.
son, Verb. Si
home countess
le grand Seale.

8 Pasch. 4 Jac. A-
bingdons case re-
solved by the
Justices.

6 M. 12 & 13 El.
ubi supra.

See before cap. 3.
Of Misprision of
treason.

47 H. 4. 27.

21 E. 4. 71.

13 H. 7. 10.

Pl. com.

Lib. 4. fo. 42. in

Heydons case.

Lib. 9. fo. 67.

Maolallyes case,

& Lib. 23. fo. 5.

e Lib. 4. fo. 44.

Vauxes case.

Pl. com. fo. 474.

Saunders case.

Lib. 9. 81. Agnes

Gores case.

See Pasch. 32 E. 3.

coram Rege Rot.

62. Ph. Clifton

case.

f 25 E. 3. 39. b.

cor. 126.

26 Aff. 47.

9 H. 4. 1.

7 H. 6. 42.

recepavit & confortavit. And therefore if a man write Letters for his delinquent, or in favour of him, or the like, he is no accessary, for that he received not the felon.

A Vicar which instructed an Appzober which could not read, whilst he was in prison, to read, whereby he escaped, was adjudged not accessary to the felony.

Cadlin and Browne Justices of Assize in the County of Suffolk put this case to all the Judges. A man committed felony in the County of Suffolk, for which he was committed to the Gaole; and R. an Attorney advised the friends of the felon to persuade the witnesses not to appear to give evidence against him, which was done accordingly. And it was resolved, that neither the friends nor the Attorney were accessories to the felony, but that it was a great contempt and misprision, for which they might be fined and imprisoned.

The accessary cannot be guilty of petit Treason, where the principall is guilty but of Murder. For Accessorius sequitur naturam sui principalis.

If divers commit any murder, or other felony, one man may be both principall and accessary to the other.

See before cap. Clergie, that if the principall before attainder hath his Clergie, the accessary is discharged. And note generally, where the principall before attainder is pardoned, or his life otherwise saved, the accessary is discharged.

CAP. LXV.

Of Misprisions divers and severall; and first of Misprision of Felony, &c.

Of Misprision of treason we have already spoken, and of the Etymologie of the word. It remaineth now that we speak of other Misprisions.

Misprision is twofold: one is Crimen omissionis, of omission, as in concealment or not discovery of treason or felony; another is Crimen commissio- nis, of commission, as in committing some heinous offence under the degree of felony.

Of Misprision is of two sorts, viz. Passive, and Active. Passive is of the nature of concealment, whereof some be by the Common law, and some by Statute. By the Common law, as Passive misprision that is concealment of High Treason, whereof we have spoken; and Passive Misprision that is concealment of felony, whereof we are now in this Chapter to speak. Some by Statute: as if any be moved to make commotion or unlawfull assembly, and do not within Twenty four hours declare the same to a Justice of Peace, Sheriffe, Mayor, or Bailiffe, &c. Concealment by Juries, 3 H. 7. ca. 1. 33 H. 8. ca. 6, &c.

Now are we to speak of concealment or not discovery of felony. As in case of High Treason, whether the treason be by the Common law or Statute, the concealment of it is misprision of treason; so in case of felony, whether the felony be by the Common law or by Statute, the concealment of it is misprision of felony.

If any be present when a man is slain, and omit to apprehend the slayer, it is a misprision, and shall be punished by fine and imprisonment.

And as the Concealment of High Treason is higher by many degrees than the concealment of felony, so the punishment for the concealment of the greater is heavier than of the lesser; and yet the concealment of felonies in Sheriffs or Bailiffs of Liberties is more severely punished than in others, viz. by imprisonment by one year, and rancome at the will of the King. From which punishment

26 Ass. ubi sup.

6 Mic. 7 R. 2. coram Rege Rot. 23. Cant. 7 H. 4. 27.

6 Mic. 11 & 13 EL the case of Roberts the Attorney

4 See before cap. Petit treason.

27 H. 4. 27.

2 H. 4. 16.

1 Mar. 1. Parl. ca. 12. 1 Eliz. cap. 17. See the second part of the Institutes. W. 1. cap. 9.

8 E. 2. Cor. 395.

W. 1. ca. 9. See the exposition thereof, ubi sup.

Bract. lib. 3. fo.
118.2.

nishment if any will save himself, he must follow the advice of Bracton, to discover it to the King, or to some Judge or Magistrate that for administration of justice supplieth his place, with all speed that he can.

Non enim debet morari in uno loco per duas noctes vel per duos dies, nec debet ad aliqua negotia, quamvis urgentissima, se convertere, quia vix permittitur ei ut retrospiciat.

And this is intended of a concealment or not discovery of his mere knowledge: for in case of High treason, he that knoweth it before it be done, and assenteth unto it, is particeps criminis, and guilty of treason; and in case of felony, he that receiveth the thief, and assenteth to it, is accessory.

See before in the Chapter of Mifprifion of treason, that every treason and felony both include in it mifprifion of treason and felony. See the Statute of 23 El. cap. 1. Of mifprifion, that is, crimen commissionis.

Compassings or imaginations against the King by word, without an overt act, is a high mifprifion, as before is said. * In cogitatione tua ne detrahas Regi, &c. quia aves cœli portabunt vocem tuam, & qui habet pennas annuntiabit sententiam.

See before the
chapt. of Mifprifion
of treason,
fo. 36. and of
Principal and
Accessory, fo. 148.
* Ecclesiastes cap.
10. ver. 20.

a See the 2. part of
the Institutes,
W. 1. cap. 33.
25 E. 3. cap. 1.
It is high treason
to kill any of them
in their places.

b 22 E. 3. 13.
19 E. 3. judgment
174.

Mich. 6 E. 3. Corā
Rege, Rot. 55.
Eborum.

41 E. 3. Cor. 280.
Nota, the forfeiture
of his lands
is but during his
life.

41 E. 3. 25.
c Inter leges Alve-
redi, cap. 34.

3 El. Dier. 188.
d Ja. Bellinghams
case Coram rege,
with his elbow &
shoulder.

d 33 H. 8. ca. 12.

If any man in Westminster Hall, or in any other place, sitting the Courts of Chancery, the Exchequer, the Kings Bench, the Common Bench, or before Justices of Assise or Justices of Oier and Terminer, (which Courts are mentioned in the Statute of 25 E. 3. De Proditionibus) shall draw a weapon upon any Judge or Justice, though he strike not, this is a great mifprifion, for the which he shall lose his right hand, and forfeit his lands and goods, and his body to perpetual imprisonment: the reason hereof is, because it tendeth ad impedimentum Legis terræ. So it is, if in Westminster Hall or any other place, sitting the said Courts there, or before Justices of Assise, or Oier and Terminer, and within the view of the same, a man doth strike a Juror or any other with weapon, hand, shoulder, elbow, or foot, he shall have the like punishment; but in that case, if he make an assault, and strike not, the offender shall not have the like punishment.

If any strike in the Kings Palace, where the Kings royall person resideth, he shall not lose his right hand, unless he draw blood; but if he draw blood, then his right hand shall be stricken off, he perpetually imprisoned, and fined and ransomed.

Note, the law makes a great difference between stroke or blow in or before any of the said Courts of Justice, where the King is representatively present, and the Kings Court, where his royall person resideth. For in the Kings house (as hath been said) blood must be drawn, which needeth not in or before the Courts of Justice, but a stroke only sufficeth. Again, the punishment is more severe in the one case then in the other: such honour the law attributeth to Courts of Justice, when the Judges or Justices are doing of that which to Justice appertaineth: and the reason is, Quia Justitiā firmatur Solium.

But note, that by the ancient laws of this Realm, striking only in the Kings Court was punished by death. Vide Lambert inter leges Inz ca. 6. Si quis in Regia pugnarit, rebus suis omnibus multator, & sine morte etiam plectendus, Regis arbitrium & jus esto. Inter leges Canuti cap. 56. Si quis in Regia dimicavit, capitale esto, &c. Inter leges Alveredi cap. 7. Qui in Regia dimicavit ferrumve distinxerit, capitor, & Regem penes arbitrium vite necisque ejus esto, &c.

e Mich. 15 El. in
the case of Peter
Burcher Esquire
of the middle
Temple.

Peter Burcher prisoner in the Tower struck within the Tower John Longworth his Keeper (who stood in a window reading of the Bible). With a billet on the head behind, whereby blood was shed, and death instantly ensued: this being without any provocation was adjudged murder, for which he was attainted, and before his execution (which was in the Strand over against Somerset house) his right hand was first stricken off, by force of the Statute of 33 H. 8. for that the Tower was one of the Queens standing houses or Palaces.

The Kings Palace at Westminster hath this liberty and privilege, viz. Nulla

Nullæ citationes aut summonitiones liceant fieri quicunque infra Palatium Regis Westm'.

Like privilege hath Westminster Hall, or other place, where the things Justices, &c. sit, as by these following Records appeareth.

Quia Bedellus Universitatis citari fecit Will. de Wivellingham infra ostium aulae Westm', Justiciariis sedentibus, ad comparend. coram Cancellario, &c. pro quo se posuit in gratiam Regis, committitur Gaol, & Henricus de Harwood, ad cujus sectam prosecutus fuit, committitur Marischal. & finem fecit.

Matilda de Nyerford, filia Willielmi de Nyerford militis defuncti, did libell against John Earl of Warren and Johan de Barro Countes of Warren the things here (in camkina domini Regis Confortis domini Regis) in a cause of matrimony and divorce, and the same Johan de Barro was cited in the things Palace at Westminster, &c. It was upon full examination of the cause adjudged in Parliament in these words, Quod praedictum Palatium domini regis est locus exemptus ab omni jurisdictione ordinaria, tam regis dignitatis & coronae suae, quam libertatis Ecclesiae Westm', & maxime in praesentia ipsius domini Regis tempore Parliamenti sui ibidem: ita quod nullus summonitiones seu citationes ibidem faciat, & praecipue illis qui sunt de sanguine domini Regis, quibus major reverentia quam aliis fieri debet, &c. Consideratum est, quod officia committatur Turri London, & ibidem custodiatur ad voluntatem domini Regis.

Here two things are principally to be observed: First, that this royall privilege is not only appropriated to the Palace of Westminster, but to all the Kings Palaces, where his royall person resides. Secondly, that this privilege is to be exempted from all Ecclesiasticall jurisdiction, regis dignitatis & coronae suae ratione, &c.

If any do rescue a prisoner in or before any of the abovesaid Courts, committed by any of the abovesaid Justices, it is a great misprison, for which he and the prisoner assenting to it shall forfeit their lands and goods, and their bodies to perpetuall imprisonment, but shall not lose his hand, because no stroke or blow was given.

But it was resolved by all the Judges, that where Thomas Oldfield, sitting the Court of the Dutche of Lancaster, with a knife stabbed one Ferrer, a Justice of Peace in the view of the said Court, that the Court of the Dutche was none of the Courts to make it a misprison, to lose his right hand, &c. but the offender was to be indicted, and grievously fined.

And in 9 El. one Guirling struck another in the White hall, sitting the Masters of Requests, and it was then resolved by the Court of Kings Bench, that it was not any misprison for the which he should lose his right hand, &c. but he was indicted and fined.

Quia Thomas de Holbroke manus violentas imposuit super Johannem de Londham, &c. ad Sessionem suam sedentem apud Gipwicum, & cum dementitus est, committitur in Parlamento Turri London, & finitur 20 li. & invenit sex milites manucaptors pro bono gestu suo.

And where some of the books abovesaid say, that the offender shall forfeit his lands, and some that he shall be disherited, yet the forfeiture of his lands is only for fearm of his life, (as before is said;) for being no felony, the blood is not corrupted, nor the heir disabled to inherit. And this severe punishment is at the suit of the King, and the party may have his action, and it shall be tried by the officers and criers. And for such a stroke Thomas of Whittesly recovered five hundred pounds, Trin. 9 E. 3. Rot. 154.

Briton saith, Ascuns trespasses sont nequedent plus punishable; si come trespass fait en temps de peace a * Chivaliers ou auters gens honorables, per Ribaws ou auters viles persons; En quel case nous volons, que si Ribawe soit attainct al suit de chescun Chivalier, que il eyt ferue per felony sans defaut del Chivalier, que le Ribawe perd son pome dont il trespassa: so great a respect in those dayes was had of honour and order. Ribawe is taken here for a Rascall Russian. There is a great misprison when any revenge is sought against a Judge, Ju-

Palch. 8 E. 2.
Coram rege, Rot.
28. Norf.

4 Mich. 12 E. 3.
Coram Rege,
Rot. 101. Cant.

b Placita coram domino rege in Parlamento suo apud Westm' in praesentia domini regis, An. 21 E. 1.
c Ellenor daughter of E. 1. married with William Earl of Barry alias Barro in France, and had issue the said Johan, who married John Earl Warren.

Trin. 8 Jac. reg.
Oldfields case.

Palch. 9 Eliz.
Guidings case.

Hil. 13 E. 3. Co-
ram rege, Rot.
104. Suff.

Trin. 9 E. 3. Rot.
154. Midd.

Brit. ca. 25. fo. 47.
* Nota for the
dignity of
Knights.

Trin. 9 E. 3. Rot.
154. Midd.

Brit. ca. 25. fo. 47.
* Nota for the
dignity of
Knights.

Mich. 33 &
34 E. 1. Coram
Rege Rot. 75.

Not.

Bract. lib. 2. 105.
These words
were given to
the Treasurer
of England by
the procurement
of Pierce of Ga-
veston. 11 E. 3.
Hill. 20 E. 3.
Coram Rege
Rot. 160.

Cap. Incineris 5.
ultimo.

Pasc. 10 E. 3.
Coram Rege
Rot. 86. Linc.

Inter leges Ina
cap. 9. Lamb.
See the 4. part of
the Instit. cap.
Chancery, Artic.
Verf. Cardinal
Woolsey, Art. 4.
56, 11, 41.

Justice, Officer, Juror, Sergeant, Counsellor, Minister, or Clerk, for that which they do in discharge of their severall duties, offices and places, concerning the administration of Justice.

Roger de Hegham and others being Justices of Oier and Terminer, and sitting in the Erchequer chamber, gave judgement for Mary late the wife of William Brewse Plaintiff, against William le Brewse Defendant; which judgement was pronounced by Roger de Hegham. William de Brewse demanded of Roger de Hegham if he would abate the judgement, and said, Roger, Roger, now thou hast thy will which of long time thou hast sought: of whom Roger de Hegham demanded, what is that? To whom William de Brewse said, my shame and my losse, and this I will reward or recompence, or I will think of it. Whereof he being indicted and arraigned, and confessing the offence, the Record saith, Et quia, sicut honor & reverentia, qui ministris domini regis ratione officii sui faciuntur, ipso regi attribuantur; sic dedecus & contemptus ministris suis facti eidem domino regi inferuntur. Consideratum est quod pradi. Willielmus de Brewse, distinctus in corpore, capite nudo, tena deposita, ear de banco domini regis ubi placita tenentur in aula Westm', per medium aulae pradiet', cum curia plena fuerit, usque ad Scaccarium (ubi deliquit) & ibidem veniam petat a prafato Rogero, &c. & postea committatur Turri London, ibidem moratur ad voluntatem regis.

Note this exemplary judgement against a Gentleman of a great and honorable family. Quelibet poena corporalis, quamvis minima, major est qualibet poena pecuniaria. And in that Record it is said, Quod dominus rex filium suum primogenitum & charissimum, Edwardum Principem Wallie, pro eo quod quadam verba grossa cuidam ministro suo dixerat, ab hospicio suo fere per dimidium anni amovit, nec ipsum filium suum in conspectu suo venire permisit, quousque dicto ministro de dicta transgressione facisfecerat.

Quia Petrus de Scales minatus fuit Ricum de Worlingworth, qui fuit de consilio Johannis de More, de vita & membris, dictus Petrus invenit plegios de bono gestu suo.

There be many Records for abusing of Jurors, viz. Pasch. 10 E. 3. Coram Rege Rot. 87. Gilbertus Twist. Pasch. 26 E. 3. ibidem, Rot. 22. Essex, Tho. Hubbert. Hill. 7 H. 5. ibidem, Rot. 24. Ricus Chedder. Mich. 17 E. 2. Coram Rege Rot. 67.

Percussio clerici curie in veniendo versus curiam, &c. Trin. 11 E. 2. Coram Rege Rot. 42. London. Not only these particular rebenges abovesaid, but all other of what kind soever are great misprisions.

Also when any rebenge is sought against any man for complaining in any of the Kings Courts, super gravaminibus, &c. for grieivances, &c. Quia deterret homines a querelis super gravaminibus in forma juris. De his qui vindictam fecerint, eo quod aliquo modo super pradietis gravaminibus in curia domini regis conquesti fuerunt.

Justiciarii razaverunt damna a Mare super Willielmum Botesford; eo quod minabatur quandam Hawisiam de vita & membris, eo quod ipsa prosequeretur ipsum in placito transgressionis.

It will conclude this point for private rebenge with an ancient law before the Conquest. Si quis privato consilio illam sibi injuriam vindicare, antequam per aequum sibi dari postulaverit, quod nomine vindicta eripuit reddito, integrum rei pretium prafato & 30 solidos dependit.

See in the Fourth part of the Institutes cap. Of the Chancery, in the Articles against Cardinal Woolsey, 4, 5, 6, 11, 41.

See in the Fourth part of the Institutes cap. Of the Chancery, in the Articles against Cardinal Woolsey, 4, 5, 6, 11, 41. C 4 P.

CAP. LXVI.

Of Conspiracy.

Conspiracy is a consultation and agreement between two or more, to appeal or indict an innocent falsely and maliciously of felony, whom accordingly they cause to be indicted or appealed, and afterward the party is lawfully acquitted by the verdict of twelve men: the party grieved may be relieved, and the offender punished two wayes. First, by a writ of conspiracy, which is a civil or common action at the suit of the party, wherein the plaintiff shall recover damages, and the defendant shall be imprisoned. Secondly, by indictment at the suit of the King, the judgement whereof is criminal; of which we are now to speak.

a Vide statum de conspiratoribus, Anno 21 E. 1. ver. Mag. Chart. part. 1. fo. 111. & definitione conspir. 33 E. 1. ibid. fo. 90. b. Artic. sup. Chart. cap. 10. F. N. B. 114, 115. Stanf. pl. cor. 172, &c. Lib. 4. fo. 45. Lib. 9. fo. 16. 56, 57, 78. 624 E. 3. 45. 127 aff. 43 E. 3. Conspiracy. 11. 59. 4 H. 5. Judgement 126. the like judgement as in attain. See the first part of the Institutes. Sect. 6 Trin. 18 E. 3. coram Rege, Rot. 148. Pasch. 32 E. 3. coram Rege, Rot. 58.

^b Upon this suit of the King, if the offenders be convicted, the judgement is grievous and terrible, viz. That they shall lose the freedom or franchise of the Law, to the intent that he shall not be put or had upon any Jury or Assize, or in any other testimony of truth: and if they have any thing to do in the Kings Courts, they shall come per solem, id est, by broad day, and make their Attorneys, and forthwith return by broad day. And their houses, lands and goods, shall be seized into the Kings hands, and their houses and lands estrepped and walled, their trees rooted up and arrased, and their bodies to prison: all things retrograde, and against order and nature, in destroying all things that have pleased or nourished them, so that by falsehood, malice and perjury, they sought to attain and overthrow the innocent. Which judgement in our Books is called a villanous judgement. First, in respect of the villany and shame which the party hath which receiveth it. Secondly, so that by the judgement he loseth the freedom and franchise of the Law, and therefore undergoeth a kind of bondage and villany. And the reason of this heavy and terrible judgement is, 1. For that the offenders have conspired and plotted the death and shedding of the blood of an innocent. 2. That they do it under fair pretence of Justice, and by course of law, which was instituted for the protection and defence of the innocent. 3. That if they had attained the innocent, he should have lost his life, (by an infamous death) his lands, his goods, and his posterity; for his blood thereby should have been corrupted, &c. 4. All this falsehood, malice and perjury is committed in placito Coronæ, in a suit for the King, which aggravateth and increaseth the offence; for that the King is the Head of Justice, and a protector of the innocent: and therefore at the Kings suit, and not at the suit of the party, this villanous judgement shall be given. So as the law hath excellently distributed the remedies; the private action of the party to give him damages, &c. and the suit of the King for exemplary punishment. And it is to be observed, that this Villanous judgement is given by the Common law, (as in the case of Attaint) and not by force of any Statute.

King E. 3. demanded of his Justices and Serjeants, whether divers men being indicted of conspiracy for the indicting of R. of felony, were mainpernable or no. And they answered the King expressly, that they were not, in respect of the obviousness of the offence.

27 Lib. ass. p. 12

CAP. LXVII.

Of Pensions, &c. received by Subjects of
Forain Kings, &c.

See the fourth
part of the Insti-
tutes, cap. the
Chancery, Artic.
against Cardinal
Woolley, Art. 27.
Vide Parl. 7 R. 2.
nu. 16.
Mat. ca. 26. v.
24.
*Nemo potest duo-
bus dominis servi-
re: aut enim unum
odio habebit, et
alterum diligen-
ter aut unum sustine-
bit, et alterum
contemnet.*
4 Regum ca. 5.
v. 26, &c. Gehe.
See 3 Jac. 1. 5.
concerning the
service of a Sub-
ject as a Souldier
or Captain to a
forain Prince,
hereafter cap.
Fugitives.
Polydor.
Hall.

Hollingshed, Stow: &c. 4 Rot. Parl. 7 R. 2. nu. 15, 18, 20, 21, 22, 23. 6 Ibid. nu. 17. 6 Ibid. nu. 24.

It is not lawfull for any subject of the King of England to take a Pension
ec. of any forain King, Prince, or State (without the Kings license) al-
beit they be in league with the King of England; both, for that they may
become enemies, and for that also it is mischievous and dangerous to the King
himself and his State, as it appeareth by this Distichon,

Principe ab externo veniunt lethalia dona,

Quæ studii specie, fara necemque ferunt.

And this was (say they) the case of the Lord Hastings, Chamberlain to King
E. 4. who in the fiftieth year of his reign, received a Pension of two thousand
Crowns yearly from the French King: who being informed by Just. Caresbye
his inward friend, and others learned in the law, that the receiving hereof was
an offence against Law, being desired by Pierce Cleret a Frenchman (who paid
the Pension) to make him an acquittance for receipt thereof for his discharge,
utterly refused the same. This report I do the rather hold to be true, for that
all our English Historians, (who for the most part rehearse but the carkasse or
outside of any point in law) give great credit hereunto. And what ill conse-
quence this and other like Pensions, and others of the Councell of King E. 4.
had, you may read in our Histories.

See the case in 7 R. 2. of Spencer Bishop of Norwich; and there also the
case of Pierce Cressingham and others, and of Sir William Ellingham and
others, punished for receiving of money, &c. of the French King, which owe
them, without the Kings license, to yield up Castles and Forts in France com-
mitted to their custody, punished by Fine and Imprisonment.

See the fourth part of the Institutes, cap. Of the Chancery, Artic. 27. against
Cardinal Woolley.

CAP. LXVIII.

Of Bribery, Extortion, Exaction, &c.
And first of Bribery.

Bribery is a great misprision, when any man in Judicial place takes any Fee or Pension, Robe or Livery, Gift, Reward, or Brocage of any person, that hath to do before him any way, for doing his office, or by colour of his office, but of the King only, unless it be of meat and drink, and that of small value, upon divers and grievous punishments.

Forreſcue, ca. 31.

This word [Bribery] cometh of the French word Briber, which signifieth to devoure, or eat greedily, applyed to the devouring of a corrupt Judge, of whom the Psalmist speaking in the person of God, saith, Qui devorat plebem meam sicut escam panis. Qui cognoscit faciem in iudicio, non bene facit: iste pro buccella panis deserit veritatem.

Psalm. 13. 4.
Prov. 28. 21.

But let us peruse the Branches of this description.

¶ A great misprision.] But it may be objected, that Bribery in a Judge was sometime adjudged a higher offence. For whereas at the Assises holden at Lincoln in the 23 year of E. 3. an Exigent was to have been awarded against Richard Saleley, Hildebrand Boreward, Guilbert Holliland, Thomas Derby, and Robert Dalderby, who formerly had been indicted of divers felonies before Sir William Thorpe, Chief Justice of the Kings Bench, and one of the Justices of Assise of the said County of Lincoln, by the said Sir William Thorpe, to stay the said Writ of Exigent against them, Cepit munera contra juramentum suum, viz. of Richard Saleley 10 li. of Hildebrand 20 li. of Holliland 40 li. of Derby 10 li. and of Dalderby 10 li. King Edward the Third appointed the Carles of Arundell, Warwick, and Huntingdon, and two Lords, the Lord Gray and the Lord Burghers, to examine the matter. Before whom Sir William Thorpe being charged with the said Bribery, Non potuit dedicere, &c. Now the Record saith, Consideratum est per dictos Justiciarios assignatos ad iudicandum secundum voluntatem domini Regis, & secundum regale posse suum, quod quia predictus Willielmus de Thorpe, qui sacramentum Domini Regis, quod erga populum suum habuit custodiendum, fregit maliciose, false, & rebelliter in quantum in ipso fuit, & ex causis supradictis per ipsum Willielmum, ut predictum est, expresse cognitis, suspendatur, & quod omnia terra & tenementa, bona & catalla sua remaneant forisfacta. This sentence seemeth to have his foundation as well upon the oath of the Judges, (for the Record saith) contra juramentum suum, and the conclusion of the Oath, And in case ye be found in any default in any of the points aforesaid, ye shall be *ad voluntatem Regis*, of body, lands, and goods, thereof to be done as pleaseth him: As also for that this last clause is enacted by authority of Parliament (as they say) in Anno 20 E. 3. And hereupon they the said Lords were appointed to judge secundum voluntatem domini Regis, & regale posse suum, according to the words of the Oath and act of Parliament. And this judgement was repeated in Anno 25 to the Lords, and affirmed by them.

Rot. Par. Anno
24 E. 3. part 3.
m. 2. & Rot. Par.
Anno 25 E. 3.
part 1. m. 17.
Rot. Parl. 25 E. 3.
nu. 10.
23 E. 3.

Anno 24 E. 3.

The Oath of the
Justices Anno
18 E. 3.

20 E. 3. cap. 2.

This precedent is not to be followed at this day for divers causes. First, it seemeth by the violation of the Kings Oath, and of this word [rebelliter] and by the forfeiture of all his lands & tenements to the King, that this offence should be

be

be treason against the King; and then it being either High Treason or Petit Treason, it is taken away by the statute of 25 E. 3. De prodicionibus, the same being none of them that are there expressed. And in all the Record this word [felonice] is not to be found, as it ought to have been if it had been felony.

Neither by the words of the Oath, or of the supposed Act of 20 E. 3. can the judgement (quodd suspendatur) be warranted: for these words [to be at the Kings will for body, &c.] cannot be extended to losse of life, no more then the Statute of Carlisle (sub forisfactura omnium quæ in potestate sua obtiner) extendeth to forfeiture of life, but to imprisonment, &c. viz. losse of liberty, &c.

But at this Parliament, viz. in Anno 20 E. 3. taking in hand of quarrels other then their own, and maintenance of them, is prohibited upon the pains aforesaid, viz. the pains contained in the said supposed Act of 20 E. 3. cap. 1. upon pain to be at our will, body, lands, and goods, to do thereof as shall please us: which without question was never extended to losse of life, &c. but to imprisonment, as common experience daily teacheth. For, Hæc est voluntas Regis, viz. per Justiciarios suos & per legem, &c. Therefore, as by the Record appeareth, Sir William Thorpe was pardoned and restored to all his lands. And we were desirous to see the Record of the Act of 20 E. 3. cap. 1. but there is no Record of any such Act in the Parliament Roll. And the very frame and composition of it seemeth to be but a rehearsal of a Commandement from the King: for the letter of it beginneth, First, we have commanded all our Justices, that they shall from thenceforth do equall law, &c. and therefore justly omitted out of the Parliament Roll of Acts of Parliaments: and yet the imprinting of it necessary, for that the fourth Chapter of this Parliament hath reference to the pains contained in it.

Anno 35 E. 1.
the stat. of Carlisle.
20 E. 3. cap. 4.

2 R. 3. fo. 11.
Sec 8 R. 2. cap. 3.
Rot. Parl. 10 R. 2.
nu. 24.

Vid. 1 H. 4. nu. 99.
& Nota.

It is enacted by Parliament Anno 11 H. 4. in these words;

Rot. Parl. Anno
11 H. 4. nu. 28.
never imprinted.

Item. **Q**ue nul Chancelor, Treasurer, Garden del Privie Seal, Counselor le Roy, Ser'ns a counsell del roy, ne nul autre Officer, Judge ne minister le Roy, pernans fees ou gages de Roy pur lour ditz offices ou services, preigne en nul manner en temps a Vener ascun manner de d. ne ou brocage de nulluy pur lour ditz offices & services a fair, sur peine de responder au Roy de la treble que ifsint preignent, & de satisfaire la partie, & punys al volunt le Roy, & soit discharges de son office, service & counsel per tous jours; & que chescun que voiera poursuivre en la dit ma ter, eyt la suite cibien pur le Roy, come pur luy mesme, & eit la tierce part del somme, de que la partie est duement convicte.

By this Act of Parliament, which is the judgement of the whole Parliament, it appeareth, that if that which is imprinted as the first Chapter of 20 E. 3. had been an Act of Parliament, then this statute of 11 H. 4. would never have inflicted this kind of punishment, which is other, and farre lesse then that which is mentioned in 20 E. 3. And where it is said in this Act of 11 H. 4. [& punis al volunt le roy] that is, by fine and imprisonment by the Court where the conviction shall be; for, as hath been said, Hæc est voluntas Regis, viz. per Justiciarios suos & legem suam, & non per dominum Regem in camera sua, vel aliter.

So as by warrant of this Act of Parliament we have said, that Bribery is a Disposition; for that it is neither treason, nor felony: and it is a great Disposition, for that it is ever accompanied with Perjury.

* True it is, that Sir Thomas Weyland, Chief Justice of the Court of Common pleas, was attainted of felony, but it was not for Bribery, but being guilty of

2 R. 3. 11. 2.
* Plac. de Parl.
apud Asherugg
in Cr'o Ep. anno
19 E. 1.
Et Hollingsh.
Chron. pag. 284.
285. he confessed
felony, and abjured.

of being accessory to murder, for the which by the Common law he was absolved the Realm.

Likewise Adam de Stratton Chief Baron of the Exchequer, a man of great possessions and riches, was attainted of felony by him committed: all which I collect upon Records of Parliament, the Clerk guides, for in the Parliament holden in 18 E. 1. in the same year when he was attainted, I find two petitions, one preferred by himself in these words, Adam de Stratton petit gratiam regis quod restitatur ad aliquam partem terrarum suarum, & de bonis suis quos habuit tempore quo fuit. viz. 26000. lib. s. in 10. s. in 10. s. in 10. s.

The other by Margaret de Boteler in these words, Margareta quæ fuit uxor Joh. de Boteler, de qua Adam de Stratton tenuit 12 li. 10. s. in London, clamat habere ut eschaet. Respons. Rex non concessit, quia in civitate nulla est eschaeta nisi regis. And at the same Parliament fo. 3. it is resolved, non fuerit nisi tres forme brevis de Eschaeta. Quia ut legatus, vel suspensus, vel abjuravit regnum. And by consequence Adam de Stratton seeing his lands escheated, must have the judgement of one of these three. Which we have added to answer secret objections that might be made out of the mistakings of our Chronicles.

The rest of the Justices were removed, fined, and imprisoned, saving Johannes de Meringham, and Elias de Beekingham, who to their eternall memory and honour were found upright and free from all bribery and corruption.

It was petitioned in Parliament, that the statutes whereby the Justices of the one bench or the other should take no reward, ne be of any mans fee, may be observed. The Kings answer was, The King hath and will charge such Justices to minister right, and will punish the contrary, and therefore willet that all statutes made touching them & the Barons of the Exchequer be made void.

¶ When any man in judiciall place, &c.] For the difference between bribery and extortion is, that bribery is only committed by him that hath a judicial place, and extortion may be committed either by him that hath a judicial place, or by him that hath a ministeriall office.

And this offence of bribery may be committed by any that hath any judicial place either Ecclesiasticall or Temporal. Nam accipitis personam nec munera, (and the reason is expressed by the Holy Ghost) quia munera cæcæant oculos sapientum, & mutant verba iustorum.

If bribery hath so great force as to blind the eyes of the wise Judge, and to change the words of the just, Beatus ille qui excutit manus suas ab omni munere. Iudex debet habere duos Sales: Salem Sapientie, ne sit insipidus, & Salem Conscientie, ne sit diabolus.

Though the bribe be small, yet the fault is great: and this appeareth by a Record in the reign of E. 3. Quia diversi Iudiciiarii ad audiendum & terminandum assignati ceperunt de Johanne Berners qui indictatus fuit, 4. li. pro favore habendo die deliberationis sue, finem fecerunt domino regi per iij. M. marcas, so as they paid for every pound a thousand marks. See before Sir William Thorps case, Rot. Parl. 7 R. 2. the Chancellour was accused of a bribe of ten pound, and his man four pound and certain sili, which, though the things were small, yet it had been punished, if it had been proved.

¶ Take any fee, robe, gift, or reward.] This is warranted by the oath aforesaid.

But admit the party offereth a bribe to the Judge, meaning to corrupt him in the case depending before him, and the Judge taketh it not, yet this is an offence punishable by the law in the party that doth offer it.

¶ Brocage.] There is good warrant for this word by the said Act of 11 H. 4.

¶ Of any person that hath to do before him any way.] This hath his ground upon the oath aforesaid, so as bribery may be committed

Rot. Parl. 18 E.
1. fol. 5. nu. 61.

* There is a space
left in the Record.
Et ibid. nu. 69.

Rot. Parl. 20 E. 1.
fol. 5.

10 R. 2. nu. 24.

Deut. 16. 19.

Paschi. 17 E. 3.
Coram Rege,
Rot. 139. Essex.
John Berners
case.
Rot. Parl. 7 R. 2.
nu. 12, 13.

Anno 18 E. 3.

* Since these In-
stitutes so was it
resolved in the
Star-chamber,
Trin. 6 Car. Reg.
in an information
against Bonham
Norton and o-
thers.

2 R. 2. ca. 2. See
the Statute of
5 E. 6. ca. 16.

not only when a suit dependeth in foro contentioso (as it was in the case of Sir Fr. Bacon B. of S. Albans, B. Chancellor of England, who for many exorbitant and sordid bribes was sentenced by the Lords of Parliament, which you may read Rot. Parl. Anno 19. Jacobi regis) but also when any in Judicial place doth any thing ~~inute~~ ^{colore officii} though there be no suit at all. For example, if the Lord Treasurer, for any gift or brokerage, shall make any Customer, Controller, or any Officer or Minister of the King, this is bribery, for he ought to take nothing in that case by the Statute of 1 R. 2. but that he make all such Officers and Ministers of the best and most lawfull men, and sufficient for their estimation and knowledge. (An excellent law, tending greatly to his Majesties advantage, to the good usage and encouragement of Merchants, &c. and generally to the advancement of commerce, trade and traffique, the life of this Island.) Read this Statute, for it is of a large extent, and the Statute of 5 E. 6. for they are Laws made contra ambitum, and worthy to be put in execution, for they prevent bribery and extortion: for they that buy, will sell.

Vendit Alexander claves, altaria, sacra
Vendere jure potest, emeracille prius;

And that Statute of 5 E. 6. doth extend as well to Ecclesiasticall offices as Temporal, which concern the administration and execution of justice. And it was resolved in the case of Doctor Trever Chancellor of a Bishop in Wales, that both the office of Chancellor and Register of the Bishop are within that Statute, because they concerne the administration of justice.

L. Earl of M. Lord Treasurer of England, took colore officii divers bribes, &c. And namely where the Farmers of the Customs exhibited a petition to have certain just allowances, which his Majesty referred to the said Lord Treasurer, who long delayed the petitioners, until they gave him several bribes, and then he gave way to relieve them. For this and other his briberies, extortions, oppressions, and other grievous misdemeanours in his several offices of the Lord Treasurer, and Master of the Court of Wards (no suit being in any of those cases depending) upon complaint and charge of the Commons in this Parliament, and after evident proof and often hearing of the cause, the Lords of Parliament (the Lord Treasurer being brought to the bar by the Gentleman Usher and Benjant at Arms, and kneeling till he was commanded to stand up) upon the petition of the Commons by the Speaker, gave this judgement against him by the mouth of the Lord Keeper in these words: This High Court of Parliament doth adjudge; First, that you L. Earl of M. now Lord Treasurer of England, shall lose all your offices which you hold in this Kingdome. 2. And shall be for ever incapable of any office, place, or employment in this State and Common-wealth. 3. And that you shall be imprisoned in the Tower of London during the Kings pleasure. 4. And that you shall pay to our Sovereign the King the fine of 50000. li. 5. And that you shall never sit in Parliament any more. 6. And that you shall never come within the Hedge of the Kings Court; as by the said Roll of the Parliament appeareth, which is worthy of your reading at large.

In anno 21. H. 8. by Articles under the hands of all the Lords of the Privy Councell, (whereof Sir Thomas Moore then Lord Chancellor was one) and of the principall Judges of the Realme, which I have seen, Cardinall Woolsey was charged with divers briberies, namely in the eighteenth Article, in these words, Also the said Lord Cardinall constrained all Ordinaries in England yearly to compound with him, or else he would usurp half or the whole of their jurisdiction by prevention, not for good order of the Diocess, but to exact treasure: for there is never a poor Archdeacon in England but that he paid to him a yearly portion of his living.

If any Ordinary, &c. having power by the Act of 21 H. 8. to grant the administration of the goods of him that dieth intestate, or as intestate, to the widow or next of kin, &c. take any reward for preferring of any person before another to the administration, it is Bribery.

12. 6. 70: Hil. 8 Ja. In
Communi banco
D. Trevers case.
See hereafter ca.
of Simony, and
the 1. part of the
Instic. Sect. 378.
fo. 234.
* Rot. Parl. 21 Ja.
regis.

Anno 21 H. 8.
Artic. 18.

21 H. 8. ca. 5.
Vide 2 R. 2 Rot.
Parl. nu. 46.

Si quis contra fas & leges administrarit, vel pro odio quod in alium habuerit iudicari perperam, aut denique nummarium se iudicem præbuerit, proprii capitis æstimatione Anglorum jure regi damnatur, nisi quidem legum id accidisse infamia, &c.

The law before the Conquest. Inter leges Canonicas cap. 13.

C A P. LXIX.

Of Extortion, Exaction, &c.

This is another great Misprision, because it is accompanied with perjury. Hereof you may read in the First part of the Institutes Sect. 701.

See also in the Second part of the Institutes W. 1. cap. 26. & cap. 10. and in the Fourth part of the Institutes cap. Chancery, in the Articles against Cardinall Woolsey, Articl. 3. Extortion of Ordinaries. Ranuatiatores hominum, extortionatores hominum: a *Ranunnieth*, an extortioner of men.

The Collectors of the Fifteens were committed to prison, for that they took of every town eighteen pence for an acquittance.

A Coroner was committed to prison, because he would not take the view of the dead body, before he had received for himself six shillings eight pence, and for his Clerk two shillings, and was fined at forty shillings.

If any of the Kings Councell or his Ministers do exact a bond of any of his subjects, to come to the King with forces and arms, &c. when they should be sent for, such writings are to the Kings dishonour, for that every man is bound to do to the King, as to his liege Lord, all that appertaineth to him, without any manner of writing (note the generality hereof) and such writings are to be cancelled, as by the Act appeareth.

Hereupon (by Authority of this Parliament) these conclusions do follow. First, whatsoever any subject is bound to do to the King as to his liege Lord, no bond or writing is to be exacted of the subject for doing thereof. Secondly, whatsoever bonds or writings are to the Kings dishonour, are against law. Thirdly, whether such bonds or writings be made to the King or any other, the bonds or writings be void.

If a Bishop or other Ecclesiastical Judge or Minister doth exact a bond or oath of any person in any case Ecclesiasticall not warrantable by law, the bond is void, and this exaction is punishable by fine, &c. the Record is very long, but worthy to be read. See Rot. Parl. Anno 8 H. 4. nu. 15, 16, 17, 18, 19, 20. excellent matter concerning fees in Courts of Justice, and in the Kings household.

Officialis indictatus de citando & affligendo plurimos, non potest dedicere, & petit quod admittatur ad finem.

Contra sequestratores, commissarios, & alios offic' episcoporum pro captione feodorum, priusquam debent, pro testamentis probandis.

The extortion of the Clergy and of their Ministers to be enquired of by Justices of Peace.

Resolutions upon the Statute of 21 H. 8. ca. 5.

If a man makes his Testament in paper, and dieth possessed of goods and chattels above the value of forty pound, and the Executor causeth the Testament to be transcribed in parchment, and bringeth both to the Ordinary, &c. to be proved, it is at the election of the Ordinary whether he will put the Seal and Probate to the original in paper, or to the transcript in parchment: but whether he put them to the one or the other, there can be taken of the Executor, &c. in the whole but five shillings, and not above, viz. two shillings six pence to the Ordinary, &c. and his Ministers, and two shillings six pence to the Scribe

4 Lib. 10. fo. 101, & 102. Beawfages case. See the 1. part of the institutes Sect. 701. Verb. [Extortioners] 2. part of the Instit. W. ca. 26. The 4. part of the Institutes, ca. Chancery, in the Articles against Cardinall Woolsey, Art. 3. b Trin. 28 E. 3. Coram Rege, Rot. 37. Eborum. c Hil. 20 E. 3. Coram Rege, Rot. 159. Norff. d Ibidem in the same Roll. e 1 E. 3. Stat. 2. ca. 15. f Nota. g Int. Inquisit. apud Lancaster Coram Rogero Loveday & Waltero de Wynborn An. 6 E. 1. Cornub. h Mich. 22 E. 3. Coram Rege, Rot. 181. Eboru. i Hil. 23 E. 3. Coram Rege. k Rot. Parl. 3 R. nu. 38, 39. l H. 5. nu. 23, 24. Mich. 6 Jacobi, Rot. 1301. in Comuni Banco, Int. Edm. Neale Informer, &c. & Jacobum Rowle official' infra Archidiaconat' de Huntingdon Defendant per le Chief Justice Walmesly, Warburton, Daniel, & Foster.

For punishment
of Ecclesiasticall
Judges for Extor-
tion, See Rot.
de Inquisit. in
Com. Eborū, So-
merſet, &c. Anno
4 E. 1. in Theſau-
rar. De iudicibus
Eccleſiaſticis di-
cunt, &c. Rot.
Parl. 8 E. 3. nu. 9.
The ſtatute of
31 E. 3. cap. 4.
Paſch. 32 E. 3.
Coram Rege, Rot.
27. Rot. Parl.
30 E. 3. nu. 9.
1 R. 2. nu. 109.
2 R. 2. nu. 40.
13 R. 2. nu. 38, 39.
7 R. 2. nu. 53.
The Statute of
3 H. 5. ca. 4.

Mich. 20 Jacobi,
in Camera Stel-
lata, in Sir Jo.
Bennets caſe.

2 H. 4. ca. 10.

2 H. 4. ca. 8.

2 H. 4. ca. 23.

33 H. 8. ca. 39.

for registering the ſame; or elſe the ſaid Scribe to be at his liberty, to reſuſe thoſe two ſhillings and ſix pence, and to have for writing every ten lines of the ſaid Teſtament, whereof every line to contain ten inches, one penny.

If the Executoꝝ deſire that the Teſtament in paper may be tranſcripted in parchment, he muſt agree with the party for the tranſcripting; but the Ordinary, &c. can take nothing for it, nor for the examination of the tranſcript with the originall, but onely two ſhillings ſix pence for the whole duty belonging to him. Where the goods of the dead do not exceed an hundred ſhillings, the Ordinary, &c. ſhall take nothing, and the Scribe have only for writing of the Probate ſix pence, ſo the ſaid Teſtament be exhibited in writing with war thereunto affixed ready to be ſealed. Where the goods of the dead do amount to above the value of an hundred ſhillings, and do not exceed the ſumme of forty pound, there ſhall be taken for the whole but three ſhillings ſix pence, whereof to the Ordinary, &c. two ſhillings ſix pence, and twelve pence to the Scribe for registering the ſame. Where by cuſtoms leſſe hath been taken in any of the caſes afoſeſaid, there leſſe is to be taken. And where any perſon requires a copy or copies of the Teſtament ſo proved, or Inventoꝝ ſo made, the Ordinary &c. ſhall take for the ſearch, and making of the copy of the Teſtament or Inventoꝝ, if the goods exceed not an hundred ſhillings, ſix pence; and if the goods exceed an hundred ſhillings, and exceed not forty pound, twelve pence; and if the goods exceed forty pound, two ſhillings ſix pence, or to take for every ten lines thereof of the proſeſſion beſore rehearſed, a penny.

When the party dies inteſtate, the Ordinary may diſpoſe ſomewhat in pious uſes, notwithstanding the ſaid Act of 31 E. 3. but with theſe cautions. 1. That it be after the Adminiſtration granted, and Inventoꝝ made, ſo as the ſtate of the inteſtate may be known, and thereby the ſum may appear to be competent. 2. The Adminiſtratoꝝ muſt be called to it. 3. The uſe muſt be publique and goodly. 4. It muſt be expreſſed in particular. And 5. there muſt be a decree made of it, and entred of record. So in caſe of commutation of penance, it muſt be after ſentence, and mutatis mutandis, ut ſupra.

Whereas twenty, forty, or an hundred be indicted of one felony or one treſpaſſe, and all plead to an iſſue, as not guilty, the Clark of the Crown of the Kings Bench ought not to take for the Venire facias, or for the entring of the plea, above two ſhillings, but the ſaid Clark did take for every ſuch name by extortion two ſhillings. It is ordained and eſtabliſhed, that the ſaid Clark of the Crown ſhall take no more then hath been duly uſed of old time. And moꝛe over our Sovereign Lord the King hath charged the ſaid Juſtices of the Kings Bench, that no extortion be done in this behalf in the Bench aſaſeſaid.

The Chirographer of the King in the Common Bench for making and writing of every Fine levied four ſhillings, and no moꝛe, upon pain (if he take moꝛe) to loſe his office, be expelled the Court, one years imprisonment, and to pay to the party grieved his treble damages.

The fees to the Barſhall of the Barſhalſea of the Kings houſe, you may read in the ſtatute of 2 H. 4. Vide 9 R. 2. cap. 5.

If any Auditoꝝ of the Exchequer, Dutche of Lanc, or Court of Wards take moꝛe then three ſhillings four pence for the enrolment of any Letters Patents, Decree, Grant, or Indenture of Leaſe, he ſhall forfeit for every penny ſo taken ſix ſhillings eight pence.

Munera ne capias, uncus later hamus in eſca.

Nulla carent viſco munera, virus habeat.

CAP.

CAP. LXX.

Of Usury.

Usurury is a contract upon the loan of money, or giving days for forbearing of money, debt or duty, by way of loan, chivalance, shifts, sales of wares, or other doings improprie. *Usura dicitur ab usu & ere, quia datur pro usu eris: or Usura dicitur, quasi ignis urens.*

And first, Usury is directly against the law of God. And the reason wherefore it was permitted by the law of God for an Hebrew to an Infidel, was, because it was a mean either to exterminate, or to depauperate them, as they should not be able to invade or injure Gods people.

And it is adjudged by authority of Parliament, that all Usury being forbidden by the law of God, is sinne, and detestable. And it is also enacted by Parliament, that all usury is unlawfull, that is to say, against the lawes of the Realme. Let us therefore see what former lawes have provided herein.

^a Si quis de usura convictus fuerit, omnes res suas amittat.

^a Usurarii omnes res, siue testatus siue intestatus decesserit, domini Regis sunt, vivus autem non solet aliquis de crimine usurarum appellari, nec convinci, sed inter ceteras regias inquisitiones solet inquiri & probari aliquem in tali crimine decessisse, per 12 legales homines de vicineto & per eorum sacramentum. Quo probato in Curia, omnes res mobiles, & omnia catalla, quae fuerunt ipsius usurarii mortui, ad usum domini Regis capiuntur, penes quemcunque inveniantur res illae, Haec quoque ipsius hac eadem de causa exheredatur secundum jus regni; & ad dominum vel dominos revertetur hereditas. Sciendum tamen quod, si quis aliquo tempore usurarius fuerit in vita sua, & super hoc in patria publice defamatus, si tamen a delicto ipso ante mortem suam destiterit, & poenitentiam egerit, post mortem ipsius ille, vel res ejus, lege usurarii minime censentur. Oportet ergo constare quod usurarius decesserit aliquis ad hoc, ut de eo tanquam de usurario post mortem ipsius judicetur, & de rebus ipsius tanquam de rebus usurarii disponatur.

Vide testatur de Merton cap. 5. & Fleta lib. 2. cap. 50. ^f Manifestus usurarius est intestabilis.

^g Et inter les constitutions ordeins p les viels royes Alfred, &c. ordeine fut que les chartels des usurers fussent al Roy, & que les heritages des usurers remeissent escheats al seigniors des fees, & ne serr' interre in Sanctuary.

^h Item, atrox injuria est, quae omnium mobilium amissionem confert, & legem liberam aufert, quae locum habet in usurariis Christianis.

ⁱ Ad 16 Artic. de usuris respondetur: Quod licet Episcopis pro peccato illo poenitentiam usurario injungere saluarem. Sed quia committendo usuram, usurarius furtum committit, & super hoc est convictus, catalla & res usurarii, sicut catalla furti, sunt regis; & si qui sequi voluerint contra hujusmodi usurarium, restituantur eis bona sua, quae ipsi usurarii per usuram extorsierunt.

^k And it appeareth by Bracton, that it was an Article of the charge of Inquiry by Justices in Eyre De usurariis Christianis mortuis, qui fuerunt, & quae catalla habuerunt, & quis ea habuerit. Et quod nullus recipiet usuram arte vel ingenio. And divers were indicted for taking of usury before Justices in Eyre, and some were pardoned by the King, and others not.

In ancient time a great revenue by reason of the usury of the Jews came to the Crown: For between the 50 year of H. 3. and the 1 year of H. 1. which was not above seven years compleat, there was paid into the Kings Coffer, four hundred and twenty thousand pounds of and for the usury of the Jews. And yet that excellent King, for divers weighty reasons worthy to be written in letters of gold, did by Authority of Parliament utterly prohibit the same, in these

37 H. 3. ca. 9.
13 Eliz. ca. 8.

Deut. cap. 23.
Exo. 22. Levit. 25.
Psal. 15.

13 Eliz. cap. 8.
21 Jac. cap. 17.

^d See the cust. de Norm. cap. 20.
Int. leges S. Edw.
^e Glanvil. lib. 7. cap. 16.

Merton cap. 5.
^f Fleta lib. 2. cap. 50.
^g Mirror cap. 1.
^h 3. & cap. 5. § 1.
Parl. 50 E. 3. nu. 58.
ⁱ Fleta lib. 2. c. 1.

^j Rot. Parliam. 51 H. 3. Petitiones Cleri.

^k Bract. lib. 3. fo. 116, 117.
Fleta lib. 2. c. 1.
Cap. itineris ver. Mag. Chart. part. 1. fo. 151.
Rot. pat. 3 E. 1. m. 10. 19, 20, 21, 22, 36 Rot. claus. 2 E. 1. m. 1.
Rot. pat. 3 E. 1. nu. 14, 17, 26.
Willielm. Middleton reddit computum.

Vet. Mag. Chart.
2 part. fo. 58, 59.
Stat. de Judaismo.
See the 2. part of
the Institutes,
Stat. de Judaismo,
and the Exposition
upon the
same.

words: Forasmuch as the King hath perceived that many evils and dishonours of the good men of his land had come to pass by the Usuries which the Jews have done in times past, and that many sins and offences have risen thereupon; albeit he and his Ancestours have had great profit thereby of the Jews; notwithstanding, for the honour of God, and for the common profit of his people, the King hath ordained and established, that no Jew shall take Usury, &c. Before this time Jews were divers times banished this Realm, but still they returned again. But this wise and worthy King by Authority of Parliament banishing their Usury, put the Jews into perpetuall exile into foreign Countries, where usury was tolerated. By which Act it appeareth that the suppression of Usury tendeth to the honour of God, and the common profit of the people.

By which Authorities and Records, and by many others that might be remembered, it appeareth that by the ancient laws of this Realm Usury was unlawful and punishable, although the punishment was not always one, but sometime greater, and sometime lesser. And therefore at the Parliament holden in the fiftenth year of E. 3. it was enacted and declared, according as it had been sometime holden, that the King and his heirs should have consufance of Usurers after their death, and that the Ordinary of holy Church should have consufance of Usurers alive, forasmuch as to them it appertains, to compell them by the censures of holy Church, for the sin, to make restitution of usuries taken against the law of holy Church. But this statute was afterward repealed, as hereafter shall appear.

15 E. 3. ca. 5.

Hil. 6 E. 3. Corā
Rege, Rot. 130.
Norff.
Vide 26 E. 3.
fo. 71. Moignes
calc.

Rot. Parl. 50 E. 3.
nu. 158.
Vide Rot. Parl.
6 R. 2. nu. 57.
14 R. 2. nu. 24.

Rot. Parl. 14 R. 2.
nu. 14.

3 H. 7. ca. 5, 6.
11 H. 7. ca. 8.
Vide 5 E. 6. c. 20.

37 H. 8. ca. 9.
13 Eliz. ca. 8.
21 Jac. cap. 17.

Johannes Hopd convictus per Juratores pro Usura capiend' 11. s. 8. d. pro 20. s. prestand', & sic de similibus.

Party of the Citizens of London giving over trade and traffick (which is the life of the Common wealth, and specially of an Island) and betaking themselves to live upon usury, Sir William Walworth being Lord Mayor, by the advice of the Aldermen his brethren, took such good and strict order for the execution of laws, and for suppression of Usury within the City of London, as the Commons in Parliament put up a petition to the King in these words, [That the order that was made in London against the horrible vice of usury, might be observed throughout the whole Realm.] Whereunto the King answered, That the old law should continue.

After this Sir John Northampton Mayor of the City of London, by the advice of the Aldermen his brethren, took more strict order for the suppression of unlawfull Usury within the City of London: which had so good success, as the Commons in Parliament petitioned the King in these words, The Commons pray, that against the horrible vice of usury (then termed Schefes) and practised as well by the Clergy as Laity, the order made by John Northampton late Mayor of London may be executed through the Realm. Whereunto the King answered, The King willeth those Ordinances to be viewed, and if they be found to be necessary, that the same be then affirmed. And here it is to be observed, that of ancient time the notable Merchants of London detested Usury and Dry exchange. By the statutes of 3 H. 7. and 11 H. 7. all Usury is damned and prohibited, and there it is called Dry exchange. So as Usury is not only against the law of God, and the laws of the Realm, but against the law of Nature. *Usura contra naturam est, quia usura sua natura est sterilis, nec fructum habet.*

But now by the statutes of 37 H. 8. and 13 Eliz. all former Acts, Statutes and Laws ordained and made for the avoiding or punishment of Usury, are made void and of none effect. So as at this day, neither the Common law nor any statute is in force, but onely the statutes of 37 H. 8. 13 Eliz. and 21 Jac. And the Ecclesiasticall jurisdiction is saved by the said statute of 13 Eliz. as thereby it appeareth. For the Exposition of which statutes of 37 H. 8. and 13 El. see in my Reports, viz. Lib. 3. fo. 80, 81, Lib. 5. fo. 67, 70. Lib. 9. 26.

CAP. LXXI.

Of Simony and corrupt Presentations.

Simony. *Simonia est vox ecclesiastica, à Simone illo Mago deducta; qui donum Spiritus sancti pecuniis eni putavit.*

Against Simony, &c. the statute of 31 Eliz. is made in these words.

BE it enacted, that if any person or persons, bodies politick or corporate, shall or do for any sum of mony, reward, gift, profit or benefit, directly or indirectly; or for or by reason of any promise, agreement, grant, bond, covenant, or other assurance, of or for any sum of mony, reward, gift, profit or benefit whatsoever, directly or indirectly present or collate any person to any benefice with cure of souls, dignity, prebend, or living Ecclesiastical, or give or bestow the same for or in respect of any such cause or consideration; * That then every such presentment, collation, gift and bestowing, and every admission, institution, investiture and induction thereupon shall be utterly void, frustrate and of none effect in law; and that it shall and may be lawfull to and for the Queens Majestie, her heirs and successors, to present, collate unto, or give, or bestow every such benefice, dignity, prebend and living Ecclesiastical for that one time or turn onely; and that all and every person and persons, bodies politick and corporate, that shall give or take any such sum of mony, reward, &c. shall forfeit and lose the double value of one years profit of every such benefice, dignity, prebend and living Ecclesiastical. And the person so corruptly taking, procuring, seeking, or accepting any such benefice, dignity, prebend, or living, shall thereupon and from thenceforth be adjudged a disabled person in law to have or enjoy the same benefice, dignity, prebend, or living Ecclesiastical.

malum in se against the Common law and malum prohibitum by the Civill or Canon law; whereof the Judges of the Common law in these cases take no notice.

This is the text of this part of the Act: now let us proceed to the exposition hereof, being a necessary law to be put in execution.

¶ **Present or collate.]** This is not onely intended where the person presenting or collating hath right to present or collate; but also where any person or persons, bodies politick and corporate, do usurp, and have no title to present or collate. And so it was adjudged in case where the usurpation was to a Church of the King.

Sed quando presentatio & jus patronatus sunt temporalia, quæritur quomodo sit Simonia per donum pecuniæ pro illis. Respondendum est, quod jus patronatus & presentatio dicuntur spiritualia respectu rei ad quam presentatur, quæ spiritualis est. Vide Linwood cap. de Jurejurando, fo. 80.

¶ **Shall be utterly void and of none effect.]** But here is to be observed a diversity between a presentation or collation made by a rightful patron, and an usurper. For in case of a rightful patron, which doth corruptly present or collate, by the expresse letter of this Act the King shall present: but where one doth usurp, and corruptly present or collate, there the King shall not present, but the

Simony described by the Act following.

Stat. de 31 Eliz. cap. 6.

See the 2. part of the Instit. in the exposition of the said Act of 31 El. *Injustum est illa vendere quæ gratis distribui debent.*

Vide Matth. ca. 10. ver. 8.

* Nota, the statute doth not make the bond, promise, covenant or other assurance void, but the presentment, &c. and so it was adjudged, Pasch. 40 Eliz. Rot. 1745. in Communi Banco, between Gregory plaintiff and Oldbury defendant. Nota differenciam inter malum in se against the common law & malum prohibitum by statute law, & the Judges of the

Mich. 13 Ja. in Quare impet. Between the King & the B. of Norwich, Tho. Cole and Robert Secker, which began Pasch. 13 Jac. Rot. 21. for the Vicarage of Haverell in Suffolk.

the rightfull patron: for the branch that gives the King power to present, is only intended where the rightfull patron is in fault; but where the rightfull patron is in no fault, there the corrupt act and wrong of the usurper maketh the benefice &c. void, but taketh not away the lawfull title to present from the rightfull patron: and so was it adjudged in the case abovesaid.

Mich. 13 Jac. ubi supra.

Also upon these words, [If any patron without the notice of the person so presented or collated, doth take reward, &c.] yet by the express Letter of this branch the Church &c. is void, for both the Letter and intention of this Act is to make the admission, institution and induction of any presentee, that cometh in by a corrupt patron, void. And so was it resolved in the case abovesaid, as it hath been formerly adjudged in the Common pleas. But where the presentee is not privy nor consenting to any such corrupt contract as is prohibited by this Act, because it is no Simony in him, there the presentee shall not be adjudged a disabled person within this Act: for the words of that branch be, And the person so corruptly giving, &c. so as he shall not be disabled, unless he be privy to the corrupt contract. And upon the several penning of these several branches, the diversity abovesaid was resolved Mich. 13 Jac. ubi supra.

Mich. 41 & 42 El. in communi banco between Baker and Rogers.

24 E. 3. fo. 35.
38 E. 3. 3.
7 Eliz. Dier. 257.

¶ Shall forfeit and lose the double value of one years profit.] This double value shall be accounted according to the very or true value, as the same may be letten, and shall be tryed by a Jury, and not according to the extent or taxation of the Church: whereof one was made both of the spiritualities and temporalities in 26 E. 1. 1292 in the time of Pope Nicholas: (Of that vide 11 H. 4. fo. 35. F.N.B. 176. & Polichron. lib. 7. ca. 38. Rot. Parl. 18 E. 3. nu. 44. stat. 2. 1 R. 2. nu. 102. 8 H. 6. nu. 15.) and the other taxation was made in 26 H. 8.

¶ Be adjudged a disabled person in law.] It was resolved in the case of Mich. 13 Jac. ubi supra, that the King could not dispense with this disability by a Non obstante: for when an Act of Parliament is made that disableth any person, or maketh any thing void or tortious for the good of the Church or Common wealth, in this law all the Kings subjects have an interest, and therefore the King cannot dispense therewith no more then with the Common law: but where a statute prohibiteth any thing upon a penalty, and giveth the penalty to the King, or to the King and Infanter, there the King may dispense with the penalty: and this diversity is warranted by our books.

5 E. 3. 29. 11 H. 4. 76. 2 H. 7. 6.
11 H. 7. 11.
13 H. 7. 8. b.
27 H. 8. F.N.B. 211. b. Placita com. 502.
* Anno 12 Jac. regis. Sir Arthur Ingrams case upon the statute of 5 E. 6. cap. 16.

* King James referred this case unto Sir Thomas Egerton Lord Chancellor of England, and to the chief Justice of the Kings bench, Sir Robert Vernon being Cofferer of the Kings house, by reason of which office he hath the receipt and payment of 40000. li. of the Kings treasure yearly, and payeth the wages beneath the staires, &c. did bargain and sell the said office for a great sum of money, and for certain annuities to be paid to Sir Arthur Ingram Knight. The first question was, whether the said office were void by force of the statute of 5 E. 6. ca. 16. The second was, seeing the words of this Act be [shall be adjudged a disabled person in law to all intents and purposes to have & occupy any such office, &c.] whether the King might dispense with that [disabled.] And upon mature deliberation and hearing of counsell learned, they resolved, and so certified the King, that the said office was void by the said bargain & sale, and that the King could not dispense with the said disability, for the reason and cause abovesaid; and thereupon Sir Marmaduke Darrell was preferred to that office.

5 Eliz. cap. 1.

¶ Likewise by the statute of 5 Eli. Every person which shall be elected a Knight, Citizen, Burgess, or Baron of the Cinque ports for any Parliament, before he shall enter into the Parliament house, shall take the oath of Supremacy appointed by the Act of 1 Eliz. and that he that entereth into the Parliament without taking the said oath, shall be deemed no Knight, Citizen, Burgess, or Baron, nor shall have any voice, but shall be as if he had been never returned or elected. Here be words that amount to a disability, and therefore that according to the former resolutions the King cannot dispense with the same.

¶ It

¶ It is further enacted, that if any person shall for any sum of money, reward, &c. (*ut supra*) other then for usuall fees, admit, institute, install, induct, invest, or place any person in or to any Benefice with cure of souls, dignity, Prebend, or other Living Ecclesiasticall; That then every person so offending shall forfeit and lose double value, *ut supra*; and that thereupon immediately from and after the investing, installation, or induction thereof had, the same Benefice, &c. shall be eftsoons merely void, &c.

The reason of this clause (for I was of this Parliament, and observed the proceedings therein) was to avoid hasty and precipitate Admissions, Institutions, &c. to the prejudice of them that had right to present, by putting them to a Quare Impedit, and no such hast or precipitation is used, but for reward, &c. as it is to be presumed.

There be two great enemies to justice and right, viz. Precipitatio, & morosa Cunctatio.

And albeit the Church is full by the Institution, &c. against all but the King, yet the Church becometh not void by this branch of this Act until after induction.

¶ And that the Patron, &c. shall and may present, &c.]

This is intended of the rightfull Patron, or of him that hath right to present.

¶ And be it further enacted, that if any Incumbent of any Benefice with cure of souls shall corruptly resign or exchange the same, or corruptly take for or in respect of the resigning or exchanging of the same, directly or indirectly, any pension, sum of money, or benefit whatsoever; That then as well the giver as the taker, &c. shall lose double the value of the money so given, and double the value of one years profit.

Vid. 14 H. 4. 13.

By another branch of this Act it is provided, That if any person or persons shall or do receive or take any money, reward, &c. *ut supra*, (ordinary and lawfull fees onely excepted) for or to procure the ordaining or making of any Minister, or giving any Orders, or licence to preach, shall for every offence forfeit and lose the summe of forty pound; and the party so corruptly made Minister shall forfeit and lose the sum of ten pound; and if at any time within seven years after such corrupt entring into the Ministry he shall accept or take any Benefice, Living, or promotion Ecclesiasticall, that then immediately from and after the induction, investing or installation thereof, or thereunto had, the same Benefice, Living, and Promotion Ecclesiasticall shall be eftsoons merely void, &c.

¶ Take a Benefice.] This word Beneficium Ecclesiasticum extendeth not onely to Benefices of Churches Parochiall, but to dignities and other Ecclesiasticall Promotions; as to Deaneries, Archdeaconries, Prebends, &c. And it appeareth in our books that Deaneries, Archdeaconries, Prebends, &c. are Benefices with cure of souls: but they are not comprehended under the name of Benefices with cure of souls within the statute of 21 H. 8. by reason of a speciall Proviso, which they had been, if no such Proviso had been added, viz. Deans, Archdeacons, Chancellours, Treasurers, Chanters, Prebend, or a Parson where there is a Vicar indowed.

33 E. 1. tit. Annuity 51. Vide Canon. 40. 1 Jacobi 1603 the oath against Simony, &c.
* 9 E. 3. 22.
10 E. 3. 1.
29 E. 3. 44.
Regist. 58.
21 H. 8. c. 13.
verf. finem.

¶ If any person or persons, bodies politique or corporate, which have election, nomination, voice, or assent in the choice, election, presentation

sentation or nomination of any Scholar, Fellow or any other person to have room or place in any Church Collegiat or Cathedrall, Colledges, Schools, Hospitals, Halls or Societies, shall take or receive any money, fee, or reward, &c. the place, room, office, &c. of the offender shall be void, &c.

Like cases in
Pl.com. 176. upon
the statute of
32 H. 8. of Cond.
Dier 20 Eliz. up-
on the statute of
27 H. 8. of Uses.

¶ Which have election, presentation, &c.] This Act being a law perpetual, these words extend not onely to such person and persons, &c. as at that time had election, presentation, &c. but to all and every person and persons that at any time hereafter should have election, presentation, &c. otherwise the law should be but temporary, which should be directly against the meaning of the makers of the Act. And by the same reason this Act extendeth not onely to Churches, Colledges, Schools, Hospitals, Halls and Societies founded at the time of the making of the Act, but to all such as should be erected or founded after.

¶ And if any Fellow, Officer, or Scholar in any of the Churches, Colledges, &c. *ut supra*, contract or agree for any money, reward, &c. for the leaving or resigning up of the same, his room or place to any other, &c. he shall forfeit and lose double the sum of money, &c. so received, and every person by whom or for whom any money, &c. shall be given, &c. shall be incapable of that place or room for that time or turn, &c. And it is further enacted, that at the time of every such election, presentation or nomination, as well this present Act, as the orders and statutes of the same places concerning such election, presentation or nomination, shall then and there be publickly read, upon pain to forfeit and lose the sum of forty pound, &c. whereof the one moiety to him that will sue, and the other moiety to the Church, Colledge, &c.

I have read ancient Verses concerning Simony and other corrupt entries into Churches, which are not unnecessary, in detestation of them, to remember.

*Quatuor Ecclesias portus intratur in omnes,
Casaris & Simonis, Sanguinis atque Dei.
Prima patet magnis, nummo patet altera, charis
Tertia, sed paucis quarta patere solet.*

Four doors hath every Church, and all but one forebod,

(Whereof unseene some may be peradventure)

Of Casar, Simony, of Kindred, and of God:

And each Church-man by one of these doth enter.

Great mens command doth open wide the first,

At next by money enter many one,

The third to weak Allies, (but for the Church the worst,))

Gods dore doth open to a few or none.

To conclude this chapter with this, that Simony is odious in the eye of the Common law: for a Guardian in socage of a manor, whereunto an Abbotsion is appendant, shall not present to the Church, because he can take nothing for the presentation, for the which he may account to the heir; and therefore the heir in that case shall present of what age soever. And if an heir of tenant in capite hath livery cum exitibus, yet shall the heir not present to an Abbotsion, because no issues or profit can be taken thereof.

* Latro est qui aurum ex religione secatur.

And the Common law would have the Patron to sacre from Simony, as it denied him to recover damages in a Quare impedit, or Assise of Darrein Presentment, before the statute of W. 2. cap. 5.

Simony is the more odious because it is ever accompanied with Perjury, for the presenter, &c. is sworn to commit no Simony.

CAP.

7 E. 3. 39. a
27 E. 3. 89.
29 E. 3. Present.
al. elgise. Fitz. 17.
8 E. 2. present. 10.
Fitz. N. B. 33. S.
24 E. 3. 29.
* Jerome.
3 H. 6. tit. dama-
ges 17. adjudge.
See the 2. part of
the Instit. W. 2.
ca. 5. Lib. 6. fo. 50.
& 51. Lib. 5. 58.
59. Speccor.
* Vide Linwood
ubi supra.

C A P. LXXII.

Of Monomachia, Single combate, Duell,
Affrays and Challenges, and of Pri-
vate revenge.

This single combate between any of the Kings Subjects, of their own heads and for private malice or displeasure, is prohibited by the laws of this Realm: for in a settled State governed by law, no man for any injury whatsoever ought to use private revenge; for revenge belongeth to the Magistrate, who is Gods Lieutenant. And the law herein is grounded upon the law of God. *Vindicta est mihi, & ego retribuam, dicit Dominus*, Vengeance is mine, and I will repay it, saith the Lord. *Qui vindicare vult, inveniet vindictam à Domino, & peccata illius servans servabit*, He that will revenge shall finde vengeance from the Lord, & he will surely keep his sins in remembrance.

It is also against the law of nature and of nations, for a man to be Judge in his own proper cause, *Judex in propria causa*, especially in Duello, where fury, wrath, malice and revenge are the rulers of the judgement. See more of private revenge, cap. Misprision in [Crimea commissionis.]

But it is objected, that this single combate may be undertaken for revenge and preservation of the honour of the party grieved.

Deut. 32. 35.
Rom. 12. 19.
Ecclesiasticus
28. 1.
Gen. 34. ver. 25.
& 30. of Simeon
and Levi.

Object.

Respons.

Gen 9. 6.

Brit. c. 25. f. 49. b.

Glouc. 6 E. 1. c. 9.

2 E. 3. ca. 2.

4 E. 3. c. 13.

14 E. 3. cap. 15.

13 R. 2. St. 2. c. 1.

Read these stat.

* Num. 35. 31. 33.

1. The honour or estimation of the party may more justly and notoriously be revenged and repaired by the Magistrate: in publick then by the party in private. 2. There is nothing honourable that is against the laws of his Country, and the law of nature and nations. 3. Whatsoever is against the law of God is impious and dishonourable. 4. The eminent danger of the parties seeking private revenge first, concerning the souls of both of them, as well of him that killeth (who is *vir sanguinis*) as of him that is slain and dieth in his malice: and, as to the world, he that slayeth is in worse case then he that is slain, for the murderer loeth not only his lands and goods, but his life also and his honour which he so much respected; for by his attainder his blood shall be corrupted, and if he were noble or gentle before, he thereby becomes ignoble and base; and he that is slain, by law loeth none of them: so as hereof it is truly said, *Infelix pugna, ubi majus periculum incumbit victori quam victo*. 5. Not only the soul of man, but the body also, was originally made to the image of God. *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei factus est homo*, Whoso sheddeth mans blood, by man shall his blood be shed; for in the image of God made he man. *Solus Deus qui vitam dat, vitæ est Dominus; nec potest quisquam eam justè auferre nisi Deus; vel gerens auctoritatem Dei, ut Judex*. And this was the reason that amongst Christians it was not lawfull for the Lord to kill his Villain.

In ancient time so much the law did respect honour and order, as hear what Britton saith, *Si trespas soit fait en temps de peace à Chivaliers ou à autres gens honorables per Ribaudes ou autres viles persons, si le seue soit per felony, &c. sauns desert del Chivalier, que le Ribaude perdra son poigne dont il trespasa*.

And many Ordinances, Laws, and Acts of Parliament which do prohibit the pardon of wilfull murder, are also grounded upon the law of God, so the end none should offend in hope of pardon. * *Non accipies pretium ab eo qui re- usest sanguinis, statim enim & ipse morietur. Ne polluatis terram habitationis vestræ, quæ cruore maculatur; nec aliter expiari potest, nisi per ejus sangui-*

See before in the
chapter of Mur-
der.

Mat. 26. 52.
Apocal. 13. 10.

Affray.
Trin. 10 E. 3. Co-
ram Rege, Rot.
87. North.

4 H. 6. fo. 10.
8 E. 4. fo. 5.

Regula.

8 E. 2. Cor. 29.
as Aff. pl. 56.

3 H. 7. 10. b.
Beddingfields case.

Fleta li. 1. c. 32.
§. Duellum.
2. part of the In-
stit. W. 1. c. 40.
Fleta ubi supra.

11 H. 3. Tit. droit.
Fitz. 37.

nem qui alterius sanguinem effuderit. We shall take no satisfaction for the life of a murderer, which is guilty of death, but he shall be surely put to death: so ye shall not pollute the land wherein you are, for blood defileth the land, and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.

And this law is confirmed by Christ himself in the Gospel, and by the last book of the holy Scripture. Omnes qui acceperint gladium gladio peribunt. Qui in gladio occiderit, oportet eum gladio occidi.

But albeit upon the single combat no death ensue, nor blood be drawn, yet the very combat for revenge is an Affray, & a great breach of the Kings peace, an affright and terror to the Kings subjects, and is to be punished by fine and imprisonment, and to find sureties for their good behaviour; for it is Vi & armis, & contra pacem domini Regis, &c. and in respect of incroachment upon royall Authority for revenge, it is contra coronam & dignitatem.

An Affray is a publick offence to the terror of the Kings subjects, and is an English word, and so called, because it affrighteth and maketh men affraid, and is enquirable in a Let as a common Pleas. See the Statute of 2 E. 3. c. 3. where it is, [en affraier de la pais,] and the writ grounded upon that Statute saith, In quorundam de populo terrorem, as it appeareth in F.N.B. fo. 249. f. and the register agreeth with the original, and therefore the printed book (en affray de la peace) must be amended.

And if any subject by word, writing or message, challenge another to fight with him, this is also an offence before any combat be performed, & punishable by law, and it is contra pacem, coronam & dignitatem. For, Quando aliquid prohibetur, prohibetur & omne per quod devenitur ad illud. As such offenders may be punished in the Star-chamber, whereof there be many Precedents. Now when an affray is made by single combat, any sander by that is no officer, may endeavour to part them, and prevent further danger, and the law doth encourage them hereunto: for if they receive any harm by the Affrayors, they shall have their remedy by law against them; and if the Affrayors receive hurt by the endeavouring only to part them, the Sanders by may justifie the same, and the Affrayors have no remedy by law. But if either of the parties be slain or wounded, or so stricken as he falleth down for dead, in that case the Sanders by ought to apprehend the party so slaying, wounding or striking, or to endeavour the same by hue and cry, or else for his escape they shall be fined and imprisoned. But if the Sherif, Justice of Peace, Constable or other conservator of the peace, do not part the Affrayors for the preservation of the Kings peace, and apprehend them being within his view, or doe not his uttermost endeavour to part and apprehend them, they may be fined and imprisoned for their neglect thereof, for they may command others to assist them; and therefore the rule holdeth in them, Idem est facere, & nolle prohibere cum possit: & qui non prohibet, cum prohibere possit, in culpa est. And if any be commanded to assist them therein, and refuse or neglect the same, it is a contempt in them, to be punished by fine and imprisonment.

There is a duellum allowed by law depending a suit for the trial of truth, whereof we have spoken in another place; and, as here it appeareth, there is a duellum against law. As both these an ancient Autho saith thus, and first of the lawfull: Duellum est singularis pugna inter duos ad probandum veritatem lictis, & qui vicerit probasse intelligitur; & quomvis judicium Dei expectetur ibidem, quicunque tamen Monomachiam, i. e. singularem pugnam, sponte susceperit vel optulerit, homicida est, & contrahit mortale peccatum. Et eodem modo iudex qui auctoritate desert, vel praestat, omnesque accessores & consulentes, faventes & auxiliantes, nec non & sacerdos qui dat benedictionem.

In a writ of right, if the tenant wage battail by his Champion, and if the Champion after become blind by infirmity, and not ex stulticia, he shall be discharged of the battail. And if a man be appealed of felony, and gage battaile, and after become blind, ut supra, he shall be discharged of the battail, because he becometh

becometh so by the Act of God. And if the Appellant after battell waged become blinde upon any occasion, the Appellee in favorem vice shall goe quit. When issue is joyned to be tried by battail, and the triall by battail is become impossible by the Act of God, or by the default of the Appellant, the Appellee goeth free.

And this kinde of battail, in case of Appeals and Trial of right, is by publick authority and course of law, whereunto all the people by an implied consent are parties; and (as some hold) hath his warrant by the word of God, by the single battail between David and Goliath, which was stricken by publick authority.

King E. 3. in the sixteenth year of his reign, having war with the French King for his right to the Kingdom of France, out of the greatnesse of his minde, for love of his subjects, the saving of Christian blood, and a speedy triall of the right, offered the single combat with the French King, but he refused it.

Afterwards also, after long and chargeable wars between the Crowns of England and France, for the right of the Kingdoms of France; it was an honourable offer which King R. 2. made to Charles the French King for saving of Christians guiltlesse blood, and to put an end to that bloody and lingering war: which we will rehearse in the very words of the Record it self.

^a Rex dedit potem Johanni Duci Lancast. Avunculo suo de certis requeſtis seu oblationibus Carolo Regi Franc' faciend; viz. quod negotium bellicum inter pradios reges finiatur, 1. Per certamen personarum suarum, 2. Vel aliter inter personas suas cum tribus Partis ipsorum ipsi utrinque adjunſis. 3. Aut alioquin quod dies congruus assignaretur & locus, quibus sub universali certamine potentiarum suarum finis bello imponi valeat. The Duke of Lanc' according to his Commission made these offers from the King of England to King Charles of France, but he was audius, sed non exauditus; for King Charles liked none of these offers.

^b And in Anno Domini 1196. Anno Regni Richardi primi Octavo, Philip King of France sent this challenge to Richard the first, that King R. would chuse five for his part, and he the King of France would appoint five for his part, which might fight in lists for triall of all matters in controversie between them, for the avoiding of shedding of more guiltlesse blood. King Richard accepted the offer, with condition that either King might be of the number, but this condition would not be granted.

^c These and the like offers, as they proceeded from high courage and greatnesse of mind, so had they been lawfull, if they had been warranted by publick authority.

^a Sam. t. 17.
ver. 4, 5, &c.

⁴ Rot. Francie;
7 R. 2. m. 24.
The offer of R. 2.
to King Charles
of France.
1. A single combat between the two Kings.
2. Or a combat between the two Kings and three of their Uncles on either side.
3. Or that a fit day and place might be assigned, when under the universal conflict of both their armies, an end might be put to the war.
^b N. Trivet.
^c See the 2. part of the Institutes, W. 1. c. 20.

C A P. LXXIII.

Against going or riding armed.

2 E. 3. cap. 3.
Pasch. 18 E. 3.
coram rege, Rot.
146. Midd.
8 R. 2. cap. 13.
the printed book
is 7. but it ought
to be 8. and so re-
cited in 20 R. 2.
ca. 1. Lib. 5. fo. 72.
St-Johns case.

20 R. cap. 2.

Pasch. 29 E. 1.
coram rege, Rot.
101. Essex.
Pasch. 18 E. 1.
coram Rege,
Rot. 32. Glouc.

Vet. mag. chart.
2. part. fo. 40. b.
Rot. Parl. 6 E. 3.
nu. 2 & 3.
13 E. 3. nu. 2.
14 E. 3. nu. 2.
15 E. 3. nu. 2.
17 E. 3. nu. 2.
18 E. 3. nu. 2.
25 E. 3. nu. 50.
Parl. 1 & 25 E. 3.
Parl. 2. nu. 5.

4 11 H. 7. fo. 23.
vide before cap.
Homicide. Brook
Coron. 129. See
24 H. 8. cap. 13.
Justs, Turnies,
Barriers, &c.

b Pasch. 18 E. 3.
coram rege, Rot.
146. Nota bene.
c 25 E. 3. cap. 2.
d See before cap.
High treason, verb.
Ou si home levy
guerre, fo. 9.

Item. IT is enacted, that no man, great or small, of what condition soever he be, (except the Kings servants in his presence, and his ministers in executing *des mandemens le Roy*, or of their Office, & such as be in their company assisting them, & also upon a Cry made for armes to keep the peace, & the same in such places where such things happen) be so hardy to come before the Kings Justices, or other the Kings Ministers doing their office, with force and armes, nor bring force in affray of the people, nor to go nor ride armed by night nor by day, &c. before the Kings Justices, or in any place whatsoever, upon pain to forfeit their armor to the King, and their bodies to prison at the Kings pleasure, and to make fine and ransom to the King, &c.

Upon this statute two things fall into consideration. First, what the Common law was before the making of this statute. Secondly, the true sense and exposition of this Act. For it appeareth by a Record in 29 E. 1. *quod non liceat torneare, bordeare, iustas facere, aventuras guerare, seu ad arma presumere, sine licencia regis.* See Britton fo. 29. b. It was called *turneamentum decursus*, of turning and winding, in respect of the agility as well of the horse as of the man. For in those daies this deed of Chivalry was at random, whereupon great perill ensued. Therefore in the reign of E. 3. for safety the Wilt was devised. See the statute of 7 E. 2. *De defensione portandi arma*, and the statute of W. 1. cap. 9, & cap. 17. W. 2. cap. 39. and the expositions upon the same.

It is *Lex & consuetudo Parliamenti*, that wheresoever the Parliament is holden, proclamation should be made forbidding wearing of armor, and exercise of playes and games of mien, women or children, in or about the City or place where the Parliament is holden, lest the proceedings in the high court of Parliament pro bono publico should thereby be hindered or disturbed.

^a If any by mutuall assent do use Justs or Turnements, or to play at sword and buckler, or any other deeds of armes, and the one killeth the other, this is felony, for that it is not lawfull to use them without the Kings licence; which agreeth with the record abovesaid, of 29 E. 1.

^b Willus Jordan inventus fuit vagans armatus de platis, attachiatus, &c. *compertum est per Juratores, quod minatus fuit per quosdam ignotos, & quod pro salvatione vite suae, platas predictas apposuit super corpus suum, tamen invenit securitatem pro bono gestu suo.*

^c The clause of the statute of 25 E. 3. concerning this matter, we have reserved to this place, viz.

^d And if percase any man of this realm ride armed covertly or secretly with men of arms against any other, to slay him, or rob him, or to take & keep him till he hath made fine or ransom, it shall not be adjudged treason, but it shall be judged felony or trespass, according to the laws of the realm of old time used, and according as the case requires. And if in such case, or other like, before this time any Justices have judged treason, & for this cause the lands & tenements have come into the Kings hands as forfeit, the chief Lords of the fee shall have the escheats of the tenements holden of them, whether that the same tenements be in the Kings hands or in others by gift, or in other manner. Saving

ving alwaies to our Lord the King the year and the waist, and the forfeitures of chattels, which pertain to him in the cases above-named. And that writs of *Scire facias* be granted in such case against the land-tenants without other original, and without allowing any protection in the said suit. And that of the lands which be in the Kings hands, writs be granted to the Sherifs of the Counties where the lands be, to deliver them out of the Kings hands without delay.

Concerning the point of felony, it must be observed that at the making of that statute, & by the laws of the Realm of old time used in such case, when any purposed to slay, and declared it by such overt act, voluntas reputabatur pro facto, as hath been said before; and so is this branch concerning that point to be understood.

Vide cap. High treason, verb. *Fait compasser*, fo. 6.

¶ And that writs of *Scire fac.* be granted.] Were it may appear what speedy remedy by *Scire fac.* the makers of this law gave for restitution to be made, where any of the Justices had in any of the cases mentioned in this branch judged it treason, which is declared by this law to be against law.

Scire fac.

Note, for restitution. See hereafter cap. Restitution.

Now let us peruse the words of the said Act of 2 E. 3.

¶ His ministers in executing.] By the order of the Common law and statutes of the Realm, the Sheriff, or other minister of the King, in execution of the Kings writs, or proses of law, might after resistance take posse comitatus. For, *Sequi debet potentia legem, & non antecedere.*

W. 1. ca. 9 & 17.
W. 2. cap. 39.
18 E. 2. Execution 251.
19 E. 2. ibid. 247.
3 H. 7. fo. 1 &
10. b. 14 H. 7. 8.
Lib. 5. fo. 91. Semaynes case.

¶ Des mandemens le Roy.] That is, of the Kings writs and proses of law, secundum legem & consuetudinem Angliæ. Though in this Act there be three special exceptions, yet the law doth make another exception, and that is, to assemble force to defend his house, as hereafter shall be said.

¶ To come before the Kings Justices, or other the Kings ministers doing their office, with force and armes.] Bracton doth notably write of the diversity of forces; viz. that there is *Vis expulsiua, perturbatiua, inquietiua, ablatiua, compulsiua, &c.* which you may read in him. And then (which is pertinent to our purpose) he saith, *Est etiam vis armata, (armis dejectum dico qualitercunque fuerit vis armata) non solum si quis venerit cum telis, verum etiam omnes illos dicimus armatos, qui habent cum quo nocere possunt. Telorum autem appellatione omnia in quibus singulis homines nocere possunt accipiuntur: sed si quis venerit sine armis, & ipsa concertatione ligna sumpserit, fustes & lapides, talis dicitur vis armata. Si quis autem venerit cum armis, armis tamen ad deiciendum non usus fuerit, & dejecerit, vis armata dicitur esse facta; sufficit enim terror armorum, ut videatur armis dejecisse.* Agreeing with that of the Poet,

Bracton lib. 4. fo. 162.

Jamque faces & saxa volant, furor arma ministrat.

Virgil.

Britton saith, *Nous volons, que tous gentils plus usent judgement que force.*

Britton 116. a.

¶ Nor to bring force in affray of the (pais, i.) countrey.]

This Act is notably expounded by the writ in the Register, and F. N. B. for by that writ it appeareth, that if any doth enter into or detain with force any houses, lands or tenements, the party grieved may have a writ upon this statute directed to the Sheriff, by force of which writ, if the Sheriff finde the force, then if any after proclamation made, (which proclamation is by reasonable construction to be made for avoiding of bloodshed) shall disobey, or if it be found by inquisition, the Sheriff is to seize their armes and weapons, and to arrest and take the offenders and commit them to prison, &c. But note, the Sheriff cannot restore the party grieved upon this writ to his possession, no more then he can upon the writ de vi laica removenda, but restitution must be made by force of the statutes of 8 H. 6. & 21 Jac. And yet in some case a man may not only use force and armes, but

See the chapter next before, verb. *Affraye*.
Registrum.
F. N. B. 249. f.
Nota.
Vide lib. 5. fo. 9.
Semayns case.
F. N. B. 54.
8 H. 6. cap. 9.
21 Jac. cap. 25.
3 E. 3. cor. 303.
305.
26 aff. p. 22.
21 H. 7. 39.

assem.

21 H. 7. 39.
Lib. 5. fo. 91. b.
Semaynes case.

assemble company also. As any may assemble his friends and neighbours, to keep his house against those that come to rob or kill him, or to offer him violence in it, and is by construction excepted out of this Act: and the Sheriff, &c. ought not to deal with him upon this Act; for a mans house is his castle, & domus sua cuique est tutissimum refugium; for where shall a man be safe, if it be not in his house? And in this sense it is truly said,

Armatus in armatos sumere jura sinit.

But he cannot assemble force; though he be extremely threatened, to go with him to Church, or market, or any other place, but that is prohibited by this Act.

24 E. 3. fo. 33.

¶ Nor to go armed by night or by day, &c. before the Kings Justices in any place whatsoever.] Sir Thomas Figg Knight went armed under his garments, as well in the Palace as before the Justices of the Kings Bench: for both which upon complaint made, he was arrested by Sir William Shardishill Chief Justice of the Kings Bench; and being charged therewith, he said that there had been debate between him and Sir John Trever Knight in the same week, at Pauls in London, who menaced him, &c. and therefore for doubt of danger, and safeguard of his life, he went so armed. Notwithstanding the Court upon their view awarded, that the armes were forfeited, and thereupon the same were seized, and he commanded to ward in the Marshalsea during the Kings pleasure. Sir Thomas prayed to find main-prize, which was denied, untill the pleasure of the King was known, because he was imprisoned during the Kings pleasure, according to this statute.

24 E. 3. ubi supra.
Vide the 4. part
of the Institutes,
cap. Lect.
20 R. 2. cap. 1.
Vid. indors. clauf.
2 E. 2. 19, 22.

¶ Upon pain to forfeit their armor, &c.] It appeareth before by the case of Sir Thomas Figg, that the offender was to be punished according to this Act but by forfeiture of the armor and imprisonment; but the statute of 20 R. 2. cap. 1. doth adde fine and imprisonment.

¶ And that the Kings Justices, in their presence, &c.] So did Sir William Shardishill, as is abovesaid.

¶ And other ministers in their bailiwicks, &c.] That is to say, Sheriffs, Bailiffs of liberties, &c.

¶ Lords of franchises.] And their Bailiffs, Bators, and Bailiffs of Cities and Boroughs, within the same Cities and Boroughs, and Borough-holders, Constables, and Wardens of the peace within their wards, shall have power to execute this Act. And the Justices assigned at their coming down shall inquire how such officers and Lords have exercised their offices in this case, and to punish them whom they find, that have not done that which pertained to their office. See 12 R. 2. cap. 6.

Registrum
F. N. B. 249. f.
24 E. 3. fo. 33.

It is to be observed, that upon this statute by the resolution of the Judges a writ was framed, and inserted into the Register, when any with force & armes enter any lands and tenements, or detain the same with force and armes, directed to the Sheriff, reciting the force, and our Act, (and saith) Nos statutum prædictum inviolabiliter observari, & idem infringentes juxta vim & effectum ejusdem statuti castigari facere volentes & puniri, Tibi præcipimus, &c. publice proclamari facias, &c. as in the writ. And here is a secret in law, that upon any statute made for the Common peace or good of the Realm, a writ may be devised for the better execution of the same, according to the force and effect of the Act.

Vide 36 E. 3. ca. 9.
Simile.

Note, Proclamations are of great force which are grounded upon the laws of the Realm.

CAP. LXXIV.

Of Perjury and subornation of Perjury,
and incidently of Oaths.

EVery person which shall unlawfully and corruptly procure any witness to commit any wilfull and corrupt perjury in any matter or cause depending in suit and variance by any writ, action, bill, complaint or information, in any of the Kings Courts of Chancery, Star-chamber, or in any of the Queens Majesties Courts of Record, or in any Leet, view of Frank-pledge, ancient demesne Court, Hundred Court, Court Baron, or of the Stannary, or elsewhere within any of the Kings Dominions of England or Wales, or the Marches of the same, or shall unlawfully and corruptly procure and suborn any witness to testifie *In perpetuam rei memoriam*; That then every such offender shall forfeit the summe of forty pound, &c. And if any person either by subornation or by their own act, consent or agreement, wilfully and corruptly commit any manner of wilfull perjury by their deposition in any of the Courts above-mentioned, or being examined *ad perpetuam rei memoriam*; then every person so offending shall lose and forfeit twenty pound, and to have imprisonment by the space of six months without bail or mainprize, &c. the one moiety of all which forfeitures to be to the Queen, and the other moiety to such person or persons as shall be grieved, &c.

Albeit by the Common law triall of matters of fact is by the verdict of twelve men, &c. and deposition of witnesses is but evidence to them: yet, for that most commonly Juries are led by deposition of witnesses, perjury of witnesses was severely punished by the ancient laws of this Realm; perjury it self being forbidden by the law of God, *Non perjurabis in nomine meo, nec pollues nomen Dei tui*. And again, *Non perjurabis, reddes Domino juramenta tua*.

A false witness is called Perjurus, quia perperam jurat. Perjury before the Conquest was punished sometimes by death, sometime by banishment, and sometime by corporal punishment, &c.

Anciens sont punies per cowper de langues, come soloit estre de faux testimoignes. But too severe laws are never duly executed. Afterwards it came to be more mild, for *Fleta* saith, *Atrox injuria est quæ omnium mobilium amissionem confert, &c. de perjurio convictis*.

Afterwards it came to fine and ransom, and never to bear testimony.

Et ceux se voilent perjurier pur lower, ou pur aucun doute de aucun, & ceux sont reints a nostre volunt, & mes ne soient crus per nul serement. And it appeareth in 7 H. 6. that he that is perjured shall be fined and imprisoned.

Thomas Vigry & duo alii sunt culpabiles, &c. perjurati pro fractione corbellorum Johanne de Huntingfield in sepeciali piscaria sua in aqua de Hadfeld.

Qui testes de perjurio convincere satagit, multo illis plures producere necesse habet.

The punishment of Perjury in Juries for a false verdict was so severe by the Common law, as few or no Juries were upon just cause convicted, for the

Señ. § 14. Glanvill lib. 2. ca. 19. 6 H. 3. Attaint. 72. Bract. li. 4. fo. 292. b. Fleta lib. 5. cap. 21. Britton fo. 245. 8 E. 2. Judgement 196. 16 E. 3. Ibidem 109. Mich. 3 H. 5. Coram Rege, Rot. 14 & 49. Fortescue ca. 29. judgement

a Exod. 20. 13.
Levit. 19. 11.
Mat. 5. 34.
b Leges Edw. c. 3.
Ethelst. c. 10. 25.
Edm. c. 6. Canuti
c. 6 & 35, &c.
Edw. & Gru. c. 11.
c Mir. ca. 4. § de
paines.
Int. Leg. Canuti
c. 15. Conviciato-
ri Lingua excidi-
tor.
d Fleta li. 2. ca. 1.
§ Ite Atrox, &c.
Britton fo. 38.
237. 238.
7 H. 6. fo. 25.
Hil. 8 E. 1. in
Communi bancos
Rot. 38. Essex.
Fortescue cap. 32.

Vide 1. part of the
Institutes,
Verb. Attaint,

judgement against them was, 1. Quod amodo amittant liberam legem imperpetuum. 2. Non trahantur in testimonium veritatis. 3. Bona & catalla sua forisfaciant regi. 4. Terræ & tenementa sua capiantur in manus regis. 5. Quod uxores & liberi sui amodo amoveantur. 6. Quod terræ & tenementa sua extirpentur, &c. 7. Quod capiantur & in Gaolam detrudantur. Which sheweth how odious perjury was in the eye of the law: and this law doth yet remain in force; but a milder punishment is set down by the Statute of 23 H. 8. where in the party grieved hath election to ground his writ of Attaint upon this Statute, or to take his remedy at the Common law.

23 H. 8. c. 3.

2 H. 4. 10.

11 H. 4. 88.

20 E. 4. 10. b.

22 E. 4.

13 El. Dier 302.

Mich. 7 & 8 El.

Dier 242, 243.

Mich. 10 Ja. Rowl.
ap Eliza's case,
in cam. Stellat.
See hereafter
Verb. Informatio.

Mich. 40 & 41 El.
Lib. 5. fo. 99. in
Flowers case.

For perjury concerning any temporal act, the Ecclesiastical Court hath no jurisdiction; and if it be concerning a spiritual matter, the party grieved may sue for the same in the Star-chamber. See the Statutes of 3 H. 7. ca. 1. 11 H. 7. c. 25. 32 H. 8. ca. 9. And when you have read the case in Mich. 7 & 8 Eliz. Dier 242, 243. you will confess how necessary the reading of ancient Authoꝝ and Records is, and the continual experience in the Star-chamber is against the opinion conceived there. 12 Co. 102. *Hugh Nanny's case*.

And Mich. 10 Jac. in the Star-chamber in the case of Rowland ap Eliza, it was resolved, that perjury in a witness was punishable by the common law, as hereafter shall be shewed more at large. But now let us peruse the words of the Statute.

¶ By any Writ, Action, Bill, Complaint or Information.]

Out of these words are perjury and subornation of perjury upon an indictment for the King. (for example of Riot) as it was resolved in Flowers case, because that perjury upon an indictment is not within the Statute. But seeing perjury was an offence punishable by the Common law, though the indictment of Flower grounded upon this Statute was overthrown, yet is such perjury upon an indictment punishable, and most commonly punished in the Star-chamber.

¶ Information.]

By this it appeareth, that perjury committed in an Information exhibited by the Kings Attorney, or any other for the King, by any witness produced on the behalf of the King, is punishable either by this Act or by the Common law. And so it was resolved in the said case of Rowl. ap Eliza, which was this: The Kings Attorney preferred an Information in the Exchequer against Hugh Nanny Esquire the father, and Hugh Nanny the son, and others, for intrusion and cutting down a great number of trees, &c. in Wentose in the County of Berioneth. The Defendant pleaded not guilty, and the trial being at the bar, Rowl. ap Eliza was a witness produced for the King, who deposed upon his oath to the Jury, that Hugh the father and Hugh the son joined in sale of the said trees, and commanded the Wendes to cut them down: upon which testimony the Jury found for the King, and assessed great damages, and thereupon judgement and execution was had. Hugh Nanny the father exhibited his bill in the Star-chamber at the Common law, and charged Rowland ap Eliza with perjury, and assigned the perjury, in that he the said Hugh the father never joined in sale, nor commanded the Wendes to cut down the trees, &c. And it was resolved, first, that perjury in a witness was punishable by the Common law. Secondly, that perjury in a witness for the King was punishable by the Common law, either upon an indictment, or in an information, or by this Act in an information. And the said Rowland ap Eliza was by the sentence of the Court convicted of wilfull and corrupt perjury.

The case of Rowland ap Eliza in the Star-chamber ubi supra.

But for our more orderly proceeding, let us define or describe what Perjury is in legal understanding, both upon this Statute and at the Common law.

Perjury described.

Perjury is a crime committed when a lawfull oath is ministered by any that hath authority, to any person, in any judicial proceeding, who sweareth absolutely and falsely in a matter material to the issue, or cause in question, by their own act, or by the subornation of others. Now let us peruse the branches of this description.

A lawfull Oath.] This word Oath is derived of the Laton word Eoch; and is expressed by three severall names. viz. 1. Sacramentum, à sacra, & mente, because it ought to be performed with a sacred and religious mind. Quia jurare, est Deum in testem vocare, & est actus divini cultus. 2. Juramentum, à Jure, which signifyeth law and right, because both are required and meant, or because it must be done with a just and rightfull mind. 3. Jusjurandum, compounded of two words, à jure & jurando. In the Common law Sacramentum is most commonly used: in our books and ancient statutes published in French, Serement, of the French word Serment, is used.

Serment or fardment, i. Sacrament, i. Sacramentum.
Fleta li. 5. ca. 2.
Brit. ca. 97. fo. 23.
8. b. 19. 74. 134.
165. 236. b.
Fleta li. 5. ca. 21.

An Oath is an affirmation or deniall by any Christian of any thing lawfull and honest, before one or more that have authority to give the same, for advancement of truth and right, calling Almighty God to witness that his testimony is true. And it is twofold, either assertorium ut de præterito, sicut testes, &c. seu promissorium de futuro, sicut judices, justiciarii, officarii, &c. So as an oath is so sacred, and so deeply concerneth the consciences of Christian men, as the same cannot be ministered to any unless the same be allowed by the Common law, or by some Act of Parliament; neither can any Oath allowed by the Common law or by Act of Parliament be altered, but by Act of Parliament. It is called a corporall oath, because he toucheth with his hand some part of the holy Scripture.

So resolved An.
26 El. in the case
of the Undersherif.

The oath of the Kings Privy Councell, the Justices, the Sherif, &c. was thought fit to be altered and enlarged, but that was done by authority of Parliament. For further proof whereof, and of the matters abovesaid, see the statutes here quoted, and it shall evidently appeare, that no old oath can be altered or new oath raised without an Act of Parliament, or any oath ministered by any that have not allowance by the Common law or by an Act of Parliament.

Magna Chart. c. 6.
Stanf. Pr. 17.
F. N. B. 264.
W. 1. 3 E. 1. c. 40.
18 E. 3. ubi sup.
ca. 14. 14 H. 8. c. 1.

5 R. 2. cap. 12. 6 R. 2. ca. 12. 4 H. 4. ca. 18. 2 H. 5. ca. 7. 8 E. 4. cap. 2. 1 R. 3. cap. 6 & 15. 19 H. 7. 23 H. 8. cap. 5. 32 H. 8. ca. 46. 2 E. 6. ca. 13. 27 El. cap. 12. See 3 Jac. c. 4.

And to conclude this point, It was resolved in Parliament holden in Anno 43 Eliz. that the Commissioners concerning Policies of assurances could not examine upon oath, because they had no warrant either by the Common law or by any Act of Parliament: and therefore it was enacted at that Parliament, that it should be lawfull for the said Commissioners to examine upon oath any witness, &c. At this Parliament I attended, being then Attorney general. And oaths that have no warrant by law, are rather nova tormenta quam sacramenta; and it is an high contempt to minister an oath without warrant of law, to be punished by fine and imprisonment. And therefore Commissioners that sit by force of any Commission that is not allowed by the Common law, nor warranted by authority of Parliament, that minister any oath whatsoever, are guilty of an high contempt, and for the same are to be fined and imprisoned. * For

43 Eliz. ca. 12.

Commissions are legall, and are like the Kings Writs, and none are lawfull but such as are allowed by the Common law, or warranted by some Act of Parliament: and therefore Commissions of new Inquiries, or of novell invention, are against law, and ought not to be put in execution.

* Commissions.
Regist. 1, 2, 3.
125, 126. 88. 128.
138. 161. F. N. B.
110, 111.
2 E. 3. 26.
Palch. 44 E. 3.

Coram Rege, Rot. 2. 24 E. 3. Com. Br. 3. 29 E. 3. 30, 31. 18 E. 3. ca. 1 & 4. 18 E. 3. Stat. 2. ca. 6. Rot. Parl. 18 E. 3. nu. 47. 28 E. 3. ca. 19. Rot. Parl. 50 E. 3. nu. 56, 61. 3 H. 4. nu. 22, optime. 4 H. 4. ca. 9. Rot. Parl. 9 H. 4. nu. 36. 42 Al. p. 5. 12. 42 E. 3. ca. 3. Dier 1 Eliz. 160. Scrogs case.

And albeit divers of the Kings Courts in England proceed not according to the course of the common law, yet are their proceedings allowed either by the Common law, or by some Act of Parliament.

Certain poor Christians that had spoken against the worshipping of Images were by the Bishops sworn to worship Images: * which oath was against the express law of God, and against the law of the Land, for that they had no war-

Dorset. claus. An.
19 R. 2. nu. 17.
* Exod. 20. 4.
Deut. 5. 8.

Psalme 86. 10. 96. 7. 115. 4. Levit. 26. 1. &c. Esay 44. 9. &c. Jeremy 10. 3. &c. Sapient. 13. 10. &c. August. Epist. 110. ad Jan. ca. 11. idem De fide & symbolo, ca. 7. idem in Plal. 113. con. 2.

Gregor. lib. 9.
Epist. 9.

rant to minister the same. Let the children of the Church be called and instructed by the testimonies of the holy Scripture, that nothing made with hands may be worshipped. See the second part of the Institutes, Marlbridge cap. 14 & 19. concerning oaths, and specially out of Glanville, concerning the Nobility of this Realme, and W. 1. ca. 38.

Bracton lib. 4.
fo. 186.

Jer. 4. 2.

¶ By any having authority.] For where the Court hath no authority to hold plea of the cause, but it is coram non iudice, there perjury cannot be committed. For, as Bracton saith, Sacramentum habet in se tres comites, Veritatem, Justitiam, & Judicium: Veritas habenda est in iurato; justitia & judicium in Iudice. And all this is grounded upon the law of God, Jurabis, Vivit Dominus, in veritate, & iudicio, & in justitia.

Trin. 13. Ja. Li. 11.
fo. 98. Bagges case.

¶ In any judicial proceeding.] For though an Oath be given by him that hath lawfull authority, and the same is broken, yet if it be not in a judicial proceeding, it is not perjury punishable either by the Common law, or by this Act, because they are generall and extrajudiciall, but serve for aggravation of the offence, as generall Oathes given to Officers or ministers of Justice, Citizens, Burgeses, or the like, or for the breach of the Oath of Fealty or Allegiance, &c. they shall not be charged in any Court judiciall, for the breach of them afterwards. As if an Officer commit extortion, he is in truth perjured, because it is against his generall Oath: and when he is charged with extortion, the breach of his Oath may serve for aggravation.

If a man calleth another perjured man, he may have his action upon his case, because it must be intended contrary to his Oath in a judicial proceeding; and so it is termed in our Statute of 5 Eliz. but for calling him a forsworne man, no Action both by; because the forswearing may be extrajudiciall. If the defendant perjureth himself in his answer in the Chancery, Exchequer Chamber, &c. he is not punishable by this Statute, for it extendeth but to witnesses, but he may be punished in the Star-chamber, &c.

Bracton lib. 4. fo.
289.
Fleta lib. 5. ca. 21.

¶ Who sweareth absolutely.] For the deposition must be direct and absolute, and not ut putar, nor sicut meminit, nor ut credid, &c.

Gurneys case in
the Star-chamber
Mic. 9 Jac.

¶ And falsely.] Wherein the law taketh a diversity between falsehood in expresse words, and that is only within this Statute, and falsehood in knowledge or mind, which may be punished though the words be true. For example: Damages were awarded to the plaintiff in the Star-chamber according to the value of his goods riotously taken away by the defendant: the plaintiff caused two men to swear the value of his goods that never saw nor knew them; and though that which they swore was true, yet because they knew it not, it was a false oath in them, for the which both the procurer and the witnesses were sentenced in the Star-chamber.

Fleta ubi supra.

Bracton lib. 4.
fo. 289.

For (as Fleta saith) Ad rectum juramentum exiguntur tria, veritas, conscientia, & iudicium: truth and conscience in the witness, and judgment in the Judge. And herewith agreeth Bracton, that a man may swear the truth and yet be perjured. Dicunt quidam verum, & mentiuntur, & pejerant, eo quod contra mentem vadunt. Ut si Judex juraverit Christum natum ex virgine, perjurium committit, quia contra mentem vadit, quia non credit ita esse ut jurat.

Equivocation.
Britton fo. 237.
Job 13. 7.

By the ancient law of England, in all Oathes Equivocation is utterly condemned; for Britton saith, Serement est honest & leal, quant la conscience demesne accord a chescun point a la bouche, ne plus ne moins, & fil ad discord, doncs est perillous. And this is grounded upon the law of God, Nunquid Deus indiget mendacio vestro, ut pro illo loquamini dolos, aut decipietur ut homo vestris fraudulentis? Perjuri sunt qui servatis verbis juramenti decipiunt aures eorum qui accipiunt. If equivocation should be permitted tending to the subversion of truth, it would shake the foundation of Justice.

¶ In

¶ In a matter materiall to the issue, or cause in question.] For if it be not materiall, then though it be false, yet it is no perjury, because it concerneth not the point in suit, and therefore in effect it is extrajudiciall. Also this Act giveth remedy to the party grieved, and if the deposition be not materiall, he cannot be grieved thereby. And Bracton saith, Si autem Sacramentum factum fuerit, licet falsum, tamen non committit perjurium.

Bract. lib. 4. 188.
Fleta lib. 5. ca. 21
accord.

¶ By their own act, &c.] This clause of the statute, although it be more generall then the clause of procurement, yet seeing the first clause concerning procurement extended not to perjury upon an Indictment, this clause by construction shall extend no further then the former. See Lib. Intr. Coke fo. 164. 165, 362.

Flowers case,
ubi supra.

¶ Or by the subornation of other.] Subornation is derived of Sub and orno, and ornare in one of his significations is to prepare, so as subornare is as much to say, as to prepare secretly or underhand. Est autem subornare quasi subitus in aure ipsum male ornare; unde subornatio dicitur de falsi expressione, aut de veri suppressione. And here is to be noted, that in the judgement of the Parliament Plus peccat auctor quam actor; for the suborner forfeits 40. l. & he that is suborned but 20. li. Fleta saith, Si servus cogatur scienter à Domino perjurare, uterque est perjurus; qui autem provocat eum ad jurandum quem scit falsum jurare, vel exigit, vel recipit juramentum, talis vincit homicidam, quia homicida solum corpus occidit, iste vero animam suam & alterius: & peccat, qui alium audit falsum jurare, scit, & tacet.

Fleta lib. 5. ca. 21.

In an Action of perjury brought upon this statute, the plaintiff counted, that the defendant falso dixit & deposuit, &c. and in what action, upon what issue, and in what Court, &c. and concluded, & he committit voluntarium & corruptum perjurium. And it was ruled by the whole Court, that the Count was vicious and insufficient for two causes. First, for that in this Act of 5 Eliz. as here it appeareth, there be two distinct clauses, one if he be perjured of his own proper act; the other, if he be perjured by subornation, &c. and the plaintiff ought to declare in certainty, within which of them the defendant is perjured. The second cause was, where the Act saith wilfully and corruptly commit any wilfull perjury, &c.] and the words of the Count be, falso dixit & deposuit; and saith not, voluntarie & corrupte: and the said clause, & he committit voluntarium & corruptum perjurium, saith not the former insufficiency, because it is but a conclusion upon the former matter.

Mic. 29 & 30
Eliz. coram rege.

And the like judgement was given in this Court as to this latter point, Anno 27 Eliz. in the case of one Mellers of Lincolnshire.

27 Eliz. Mellers
case.

¶ That as well the Judge and Judges of every such of the said Courts.] If the perjury be committed by any witness deposed in the Chancery, &c. and the party grieved commenceth his suit there upon this Act, the same and all the proceedings thereupon must be in Latin, according to the course of the common law, and the defendant shall not be sworn to his answer, nor examined upon interrogatories (unless the Court of Chancery had before this Act used to examine perjuries, & to examine the defendant upon oath upon interrogatories before this Act, for then such jurisdiction had been saved by a Proviso in this Act) and when issue is joyned, it shall be tried in the Kings Bench, as by Law it ought: & sic de similibus.

Dier 12 El. 288.

If a man be taken for a suspect, and he is not indicted, nor is there any certain cause to arraign him, the Court may give him the Oath of Allegiance, viz. Que il serra foial & loyal, &c. Vide 45 E. 3. 17. b. simile devant cap. 7. De Conjurati-
on, &c. in fine. 22 E. 4. 36. 20 H. 6. 37. Attorneys abjure.

25 E. 3. 42. b.
cor. 131.

See more of Perjury & of Witnesses in the fourth part of the Institutes, Cap. Commissioners for examination of witnesses, See 21 Jac. cap. 20. a good Act to prevent and reforme profane swearing.

CAP. LXXV.

Of forging of Deeds, &c.

5 Eliz. cap. 14.

IF any person or persons upon his or their own head or imagination, or by false conspiracy or fraud with others, shall wittingly, subtilly and falsely forge, or make, or subtilly cause, or wittingly assent to be forged or made any false Deed, Charter or Writing sealed, Court-Roll, or the Will of any person or persons, in writing, to the intent that the state of freehold or inheritance of any person or persons, of, in, or to any lands, tenements or hereditaments, freehold or copy-hold, or the right, title, or interest of any person or persons of, in, or to the same, or any of them, shall or may be molested, troubled, defeated, recovered, or charged, &c. or shall pronounce, publish, or shew forth in evidence any such false and forged Deed, Charter, Writing, Court-Roll, or Will, as true, knowing the same to be false and forged, as is aforesaid, to the intent above remembred, and shall be thereof convicted, either upon action or actions of forger of false Deeds to be founded upon this Statute, at the suit of the party grieved, or otherwise according to the order and due course of the laws of this Realme, or upon bill or information to be exhibited into the Court of Star-chamber, &c. he shall pay to the party grieved his double cost and damages, &c.

And be it further enacted, that if any person or persons, upon his or their own head or imagination, or by false conspiracy or fraud had with any other, shall wittingly, subtilly and falsely forge or make, or wittingly, subtilly and falsely cause or assent to be made or forged, any false Charter, Deed or Writing, to the intent that any person or persons shall or may have or claime any estate or interest for terme of years, of, in, or to any Mannors, lands, tenements or hereditaments, not being copy-hold, or any Annuity in fee-simple, fee-taile, or for term of life, lives, or years, or shall make or forge, as is aforesaid, any Obligation or Bill Obligatory, Acquittance, Release or discharge of any debt, account, action, suit, demand, or other thing personall, or shall pronounce, &c. *ut supra*; that then he shall pay, &c.

And be it further enacted, that if any person or persons being hereafter convicted or condemned of any of the offences aforesaid, &c. shall after any such his or their conviction or condemnation estoons commit or perpetrate any of the said offences in forme aforesaid, that then every such second offence or offences shall be adjudged felony, &c.

We have spoken of forgery or counterfeiting of the Great Seal or the Kings Coin, &c. which are declared by the statute of 25 E. 3. to be High Treason: Now we are to treat of forgeries of Deeds, Charters, and writings sealed, &c. in the case of Subjects. And first, after our accustomed manner, how these offences were punished of ancient time.

The Pirroz saith, *Ascuns peches sont punies p pde de poulce, come est de faulx notoires, &c. peccans membrum puniebatur.* (Car par fauxer de seale no serr' judgement mortel.)

Mir. cap. 4.
§ Des paines.
Et cap. 5. §. 1.

Britton

Britton saith, Judgment d'ee treyne, & de suffer mort, doit encout' ceux courre, q' p appeales de felony sont atteints, q' ilz eyent le seale lour seignour, qui mainpait ils sont, ou q' homes p homage counterfait, ou autrement fause, &c. Et si tiels manners des faits soient atteints a nostre suit, si soient pur le seale fause juges a judgment de pillory, ou de perdre le oraile si le fait soit simple : & si le fait soit grand & leyde, sicome touchant disherison ou perpetuall damage, si soient juges à la mort.

Britton fo. 16.
a. & b.

Fleta saith, Crimen falsi dicitur, cum quis accusatus fuerit vel appellatus, quod sigillum Regis, vel domini sui de cujus familia fuerat, falsaverit, & brevia inde consignaverit; vel chartam aliquam vel literam ad exhæredationem domini, &c. sigillaverit: in quibus causis si quis convictus fuerit, detractari meruit & suspendi. Et quod de hujusmodi falsariis dicitur, de sigilla adulterina Chartis & Literis apponentibus dicatur id idem. And in another place he saith, Est etiam atrox injuria quæ perpetuam inducit infamiam cum poena pillorari vel tumbrelli, quæ quandoque fit per falsarios sigillorum (dum tamen non regis nec domini sui de cujus fuerit familia.)

Fleta lib. 1. c. 2. 2

Fleta lib. 2. ca. 1.

We have the moze willingly repeated these ancient punishments, to shew how in part, (viz. concerning the eares and Pillory) this Act for the first offence curreth with the ancient punishment.

¶ Forge.] To forge is metaphorically taken from the Smith, who beateth upon his Anvil, and forgeth what fashion or shape he will: the offence (as it appeareth before) is called Crimen falsi, and the offender falsarius, and the Latin word to forge is falsare or fabricare. And this is properly taken when the Act is done in the name of another person.

The statute of 1 H. 5. hath these words [forge of new any false deed.] And yet if A make a feoffment by deed to B of certain land, and after A maketh a feoffment by deed to C of the same land with an antedate before the feoffment to B, this was adjudged to be a forgery within that statute, and by like reason within this statute also: and the rather in respect of the words subsequent, [or make, &c.]

26 H. 6. forger. 8.
27 H. 6. 3.

¶ Or make, &c.] These be larger words then to forge: for one may make a false writing within this Act, though it be not forged in the name of another, nor his seale nor hand counterfeited. As if A make a true deed of feoffment under his hand and seale of the Banno of Dale unto [B, and B or some other rase out D the first letter of Dale, and put in S, and then where the true Deed was of the Banno of Dale, now it is falsely altered and made the manno of Sale. This is a false writing under seale within the purview of this statute. And so it is if a Kent Charge of one hundred pounds by the year be granted out of land in fee or for life, &c. & the grantee or any other rase out one, and in stead thereof writeth two; this is a false writing within the danger of this statute.

¶ Or subtilly cause, or wittingly assent.] To cause, is to procure or counsell one to forge, &c. To assent, is to give his assent or agreement afterwards to the procurement or counsell of another. To consent, is to agree at the time of the procurement or counsell, and he in law is a procurer.

Deed, Charter, or Writing sealed.] It is required that the Deed, Charter, or writing must be sealed, that is, have some impression upon the wax; for Sigillum est cera impressa, quia cera sine impressione non est sigillum: and no Deed, Charter, or Writing, can have the force of a Deed without a Seale.

¶ Writing sealed.] These are large words: for the making of a false customary of a Banno in writing under seale, containing divers false customs tending to the disherison of the Lord of the Banno, and that the same had been

Pasch. 15 Eliz.
Dier 322. James
Taverners case,
In Camera
stella.

allowed

allowed and permitted by the Lords of the Mannor, &c. which was also false, was resolved to be within these words, [a false writing sealed.]

¶ Court-Roll, or the will of any person or persons in writing.] Here be two kinds of Puniments that need not be sealed, because they may take effect without any seale, for that they be no deeds; as Court-rolls concerning grants, surrenders, admittances, &c. of Copy or Customary lands; & the last will in writing. If any person which writeth the will of a sick man inserteth a clause in his last will, concerning the devise of any lands or tenements which he had in fee-simple, falsely without any warrant or direction of the Deviser; albeit he did not forge, or falsely make the whole will, yet is he punishable by this Statute, as it hath been often holden in the Star-chamber against the opinion reported by my Lord Dier.

Dier 12 El. f. 288.
Sir James Mar-
vyns case.

¶ To the intent that the state of freehold or inheritance of or in any lands, tenements or hereditaments, freehold or copyhold, shall or may be molested, troubled, defeated, recovered, or charged.] The great doubt upon this branch, and the branch hereafter ensuing, was, for that it is not expressed by this Act, what estate or interest should be mentioned to pass by the Deed, Charter, &c. whereby the estate of the freehold or inheritance should or might be molested, &c. or charged; whether if one did forge, &c. a deed, charter, &c. of an interest, or term of a hundred or a thousand years, &c. of lands, which are the freehold or inheritance of another, whereby the same shall or may be molested, &c. and the same question of a rent-charge for years in the like case: and the doubt was the greater, in respect of the clause hereafter ensuing, which is, To the intent that any person or persons shall or may have or claim any estate or interest for term of years, of, in, or to any manors, &c. And it was resolved, that a lease or charge for years of any lands being the freehold or inheritance of any person, was within this branch, for the clause is general, not mentioning any estate or interest, &c. whereby the molestation should grow; and it was requisite it should extend to Leases or Charges for years, for otherwise mens estates of freehold or inheritance, &c. might be of little or no value: and accordingly it was resolved, Pasch. 38 Eliz. in the Star-chamber between the Lady Gresham plaintiff, and Roger Booth Scrivener of London, Markham and others Defendants, for the forging of a grant of a rent-charge by deed bearing date anno 21 Eliz. for ninety nine years to the said Markham out of all Sir Thomas Greshams lands of inheritance, & for publication thereof; and sentence given upon the said branch accordingly against Roger Booth for publication of the same.

Pasch. 38 Eliz. in
Camera Stellata:
the Lady Gresh-
ams case.

And the said branch after ensuing is to be understood when the forgery, &c. is to the molestation of a Termor. As if A. be possessed of a lease of lands for years, and B. in his name doth forge an assignment to C. of his term, this is directly within the letter and meaning of this branch, and the rather in respect of those things that be joyned therewith under the same punishment.

¶ Or the right, title, or interest of any person or persons in or to the same.] These words were added, for that the Statute of 1 H. 5. being to undo and trouble the possession and title (in the Conjunctive) of the said Kings liege people, doubt was made whether a forgery to bar one that had but a bare right or title, and no possession, was within that Statute: and therefore this clause of 5 Eliz. added this clause in the Disjunctive, as here it appeareth. But now by a speciall branch of this Act the Statute of 1 H. 5. cap. 3. being doubtfully penned, is repealed by a clause in this Act, and greater punishment indicated by this Statute.

Vide 4 H. 6. 25.
8 H. 6. 33.
20 H. 6.
33 H. 6. 23.
25 E. 4. 24.
Pl. com. 88.

¶ Or

¶ Or shall pronounce, publish or shew forth in evidence any such false and forged deed, &c. as true, knowing the same to be forged.] There be two things to be explained: first, what it is to pronounce or publish as true. Secondly, what knowledge is sufficient.

To pronounce or publish is, when one by words or writing pronounceth or publisheth the deed, &c. to any other as true.

¶ Knowing the same to be forged.] This knowledge may come by two meanes, either of his own knowledge, or by the relation of another. As if A. telleth B. that such a deed is false and forged, and yet B. will after pronounce or publish this to be a true deed, and afterwards it falleth out by proof that the relation of A. was true, and the deed in truth was forged, B. is in the danger of this statute: and so was it resolved in the abovesaid case of the Lady Greham, against Roger Booth, &c. ubi supra, and sentence given accordingly.

¶ And that the Defendant shall suffer upon the Pillory the corporall penance, &c.] And there is a clause that the Plaintiff should not release nor discontinue the punishment, &c. but only costs and damages: and yet it was resolved that the Queen might pardon the corporall punishment, which trencheth to common example.

And upon the statute of W. 2. ca. 25. which giveth two years imprisonment in a ravishment of ward, the King may pardon the said corporall punishment of imprisonment. And the punishment of finding of surety, and sejourning the Realme, &c. upon the statute of W. 2. cap. 28. De malefactoribus in parvis, may be pardoned by the King.

¶ Any false charter or deed.] This must be intended to be sealed according to the former clause, though it be not here specified.

¶ To the intent that any person or persons shall or may have or claim any estate or interest for terme of years.] This branch hath been explained before in the former part of this statute.

¶ Not being copyhold.] This needeth no explication.

¶ Or annuity.] This is evident.

¶ Any obligation, or bill obligatory.] These must be intended to be sealed. If a man forge a statute staple, or a Recognisance in the nature of a statute staple, that is, Acknowledge them or either of them in the name of another, these are obligations within this Act, for each of them hath the seale of the party. But otherwise it is of a Statute Merchant, or of a Recognisance, because they have not the seale of the Conusor.

¶ Or writing.] This extends to a testament in writing, whereby a term for years or goods and chattels is devised, and the former branch extendeth to a will in writing concerning freehold and inheritance.

¶ Acquittance, release or discharge.] Lodowick Grevil Esquire was bound by Recognisance of two hundred pound to Rowland Hinde of the inner Temple, for payment of one hundred pound. Hinde wrote a letter to Grevil, and writ his name in the lowest part of the letter; (as many use when they write to men of great calling.) Grevil caused the letter to be cut off, and a generall release in few words to be written above Hinde's name, and took off Hinde's seal, and fixed it under the release: so there was Hinde's hand and seale to this release.

Dier 15 Eliz.
Taverners case,
ubi supra.

Pasch. 34 E. 3.
Coram Rege,
Rot. 30. Cane
the case of Godi-
tha Waldish.
Dier 7 El. 231.

Pl. com. 80. b.

F. N. B. 96. b. c.
& 10. a.

15 H. 7. 15, &c.

Dier 13 El. 302. b.

Mich. 13. & 14 El.
in Camera Stel-
lata inter Hinde
& Grevil.

release. Hinde being not paid his hundred pound, brought a Scire fac' upon the recognisance, whereunto Grevill pleaded this release. Hinde pleaded non est factum, and tried his deed, whereupon judgment was given against him, where- by Hinde was barred of his debt. For this forged release Grevill was sentenced in the Star-chamber upon this statute.

¶ Shall pay to the party grieved his double damages.]

Upon these words in the case aforesaid between Hinde and Grevill, the que- stion was, whether Hinde should have double damages in respect of the penalty, viz. the two hundred pound, or of the hundred pound, the due debt appearing in the condition of the recognisance. And it was resolved, that damages should be assessed by the Court to double the penalty, for the penalty should be reco- vered by law if the forged release had not been: and this was reported by the Lord Dier, and imprinted, and since omitted out of the print.

¶ Being hereafter convicted or condemned of any of the offences aforesaid, shall, &c. afterwards commit, &c. any of the said offences.] Here be four kinds of offences. The first concerning mole- station, &c. of freehold & inheritance. Secondly, the publication of the same knowing, &c. The third concerning a terme for years, annuities, and demands personals. Fourthly, the publication thereof.

Now the question upon this branch concerning felony, was, that whereas the said Roger Booth was convicted in the Star-chamber for the publishing of the forged grant by deed of a rent-charge of a hundred pound per annum, as is aforesaid; afterwards the said Roger and others were charged in the Star- chamber with the forging of a deed of feoffment in the name of Sir Thomas Gresham, bearing date 20 Eliz. but forged long after: whether this second for- gery was felony or no, within this branch: and the doubt did rise upon the said words [afterwards] commit any of the said offences. And it was objected, that by reason of this word [afterwards] iterum, the second offence must be of the same na- ture as the first offence was; as the first offence being for publication of a forged deed, &c. the second offence must be for the publication of another forged deed, &c. upon that branch whereupon the first offence was grounded, or else it was said, it was not iterum, which word was in signification quasi iter unum, that is to say, per idem iter, and it is so taken for the second time. Primum quidem decipi, incommodum est, iterum scilicet, terribile turpe. Which doubt was referred to the considerations of the two Chief Justices and Chief Baron, who upon hearing of Councell learned of both sides, and upon conference, and consideration had of this Act, resolved, that the second offence was felony within the words and meaning of this Act, for the words be expressly, being condemned of any of the said offences, afterwards commit any of the said offences: So as by reason of these words, any of the said offences, this word [afterwards] is well satisfied, if he com- mit the second time any of them: and so these words any of the said offences ex- tend to any of the said four offences before mentioned. And it was also resolved by them, that by reason of this word [afterwards] the second forgery, &c. must be committed after the first conviction, or else it is no felony.

¶ Provided alwaies, &c. that if any person, &c. hath of his own head, &c. forged or made, &c. Or if any person, &c. hath heretofore published or shewed forth any false deed, &c.]

Hanford before this statute forged a lease for years of the land of the Lord Williams of Lame, which lease after by Weynman (which had married one of the daughters and heirs of the said Lord Williams) was impeached, but not as forged, and by composition for two hundred pound was redeemed by Weynman, and the lease was cancelled. And after Weynman perceiving the lease to be for- ged, sued Hanford in the Chancery to have restitution of the two hundred pound;

Pasch. 7 Ja. Inter
Sir Will. Reade
Pl. & Rogerum
Booth & alios
Def. in Camera
Stellata.

Cicero Lib. 1. de
Invent.

Trin. 11 El. Dier
in a manuscript
not printed.

and there Hanford after this statute of 5 Eliz. maintained the lease as good and true: whereupon Weynman sued Hanford in the Star-chamber; where by the opinion of the Chief Justices it was holden, that it was not within this statute, because that the deed was cancelled, and Hanford made no title to the interest of the farm.

¶ Provided alwaies, &c. that this Act, or any thing therein contained, shall not extend to any person that shall plead or shew forth any Deed or Writing exemplified under the Great seal of England, or under the seal of any other authentique Court of this Realm, nor shall extend to any Judge or Justice, or other person that shall cause any seal of any Court to be set to such Deed, Charter, or Writing enrolled, not knowing the same to be false or forged.

This must be intended of a Deed or Writing, which by law may be exemplified: for the knowledg whereof we will report a resolution of the whole Court of the Common Pleas. The issue between the said parties to be tryed at the Bar was, whether the last Abbot of Abbingdon, and all his Predecessors, &c. held certain lands in the parish of Saint Ellens, &c. discharged of the payment of Tithes: and the Plaintiff offered to shew in evidence to prove the said land to be discharged of payment of Tithes, a Vidimus or Innotescimus under the Great Seal in these words, Vidimus quendam antiquum librum in pergamento, inticulatum Volumen de copiis munimentorum seu diversorum gestorum & actuum monasterii de Abbingdon. In which book was a copy of a Bull of the Pope, for the discharge of the said land for payment of tithes, which was but part (amongst other things) of the said book. And by the opinion of the whole Court, hearing of the counsell of both parties, it was resolved that the said exemplification ought not to be given in evidence to the Jury for these causes. First, because that which was exemplified, was not of record; for neither Deed, Charter, or other Writing, either sealed, or without seal, ought to be exemplified under the Great Seal, or any other Seal in Court of Record: for seals of Courts of Record ought not to exemplify any thing but that which is of record, because Records be publick, whereunto every subject may have recourse, to confer the exemplification with the Record it self; and Records be in the custody of sworn Officers, and therefore no inconvenience can follow upon the exemplification of them. But a Deed, Charter, and other Writings are private, and remain in the custody of the party, and may be rased, interlined, or corrupted in points materiall, and if they should be exemplified, the rasure, interlineation and corruption shall not appear therein. Also the Deed, Charter, or other Writing may be forged; and if they should be exemplified, then the exemplification might ever be shewed in evidence, and not the Deed, &c. it self, and so the forgery and falsity should never upon the view of the Deed, or of the seal, or other things rising upon the view, be discovered. Moreover if a forged Deed should be exemplified, then the effect of this statute concerning publication should be taken away; for then the forged deed, &c. it self might never be published, or given in evidence, but the exemplification, and so this statute in that point deluded: and therefore where this statute or any other statute or book speaks of an Exemplification, Vidimus or Innotescimus of a Deed, &c. it must be intended of a Deed inrolled, viz. the Exemplification, Vidimus or Innotescimus of the inrolment thereof, which is of record. It was further resolved that no Record, or inrolment of any Record, may be exemplified under the Great Seal, but of a Record of the Court of Chancery, or other Record duly removed thither by Certiorari, &c. Furthermore it was resolved that no exemplification ought to be of any part of Letters Patents, or of any other Record, or of the inrolment thereof, but the whole Record of the inrolment thereof ought to be exemplified, so that the whole truth may appear, and not of such part as makes for the one party,

Mich. 10 Jacobi
Regis in communi
banco in a prohibition
between
Tho. Read Pl.
and Avis Hide
and Rich. Hide
Defendants.

Mich. 29 & 30
Eliz. lib. 5. fo. 54.
in Pages case.

28 H. 8. cap. 16.
1 & 2 Ph. & Mar.
cap. 8.
1 Eliz. cap. 1.

and nothing that make against him, or that manifesteth the truth. Lastly, in the case at the Barre, the said Book was intituled, Volumen de copiis munimentorum, & diversorum gestorum. So as seeing the Bull it self (being no matter of Record) could not be exemplified; a fortiori, no exemplification could be had of the copie of the same. And if Bulls, &c. might be exemplified, then there might be an evasion to make the statute of 28 H. 8. cap. 16. of small force, which prohibiteth pleading, or alledging of Bulls, &c. under paine of a Premunire, as by that Act appeareth.

CAP. LXXVI.

Of Libels and Libellers.

Mic. 10 E. 3. co-
ram Rege.
Rot. 92. Eborum.

What a Libell is, how many kinds of Libels there be, who are to be punished for the same, and in what manner, you may read in my Reports, viz. Lib. 5. fo. 124, 125. Lib. 9. fo. 59. To these you may adde two notable Records. By the one it appeareth, that Adam de Ravensworth was indicted in the Kings Bench for the making of a Libell in writing, in the French tongue, against Richard of Snowshall, calling him therein Roy de Ravensers, &c. Whereupon he being arraigned, pleaded thereunto not guilty, and was found guilty, as by the Records appeareth. So as a Libeller, or a publisher of a Libell, committeth a publick offence, and may be indicted therefore at the Common Law.

Mic. 18 E. 3. co-
ram Rege. Rot.
151.
Libellum.

John de Northampton, an Attorney of the Kings Bench, wrote a Letter to John Ferrers one of the Kings Councell, that neither Sir William Scot Chief Justice, nor his fellows the Kings Justices, nor their Clerks, any great thing would do by the commandement of our Lord the King, nor of Queen Philip, in that place more then any other of the Realm; which said John being called, confessed the said Letter by him to be written with his own proper hand. Judicium Curie. Et quia predictus Johannes cognovit dictam literam per se scriptam Roberto de Ferrers, qui est de concilio Regis, quæ litera continet in se nullam veritatem, preterea cujus Dominus Rex erga Curiam & Justiciarios suos hic in casu habere posset indignationem, quod esset in scandalum Justic' & Curie; ideo dictus Johannes committitur Marefc', & postea invenit 6 manucaptors pro bono gestu.

CAP.

CAP. LXXVII.

Of Champerty, Imbracery, Maintenance, &c.

SEE the first part of the Instit. Sect. 701. Verb. Maintenance; and the second part of the Institutes, W. 1. cap. 8. 32. & W. 2. cap. 49. and the exposition upon the same. See also the Statute of 32 H. 8. cap. 9. in the first part of the Institutes, *ubi supra*, Rot. Parl. 17 R. 2. nu. 10. John de Winsors case; and the fourth part of the Institutes, cap. Chancery. Whereunto you may adde, that where by the Statute of 6 H. 6. cap. 2. it is recited, that divers in times past have been disinherited, because that in speciall Assises the Tenant and Defendant might not have knowledge nor copy of the pannell of them that be impannelled to pass in the said Assises, to inform them of their right and title before the day of the Session that the Assises shall be demanded; which is a rehearsall of the Common law, but so to be understood, that both parties, plaintiff and tenant, &c. be present when such information is given, and consenting thereunto: otherwise, if one of them informeth in the absence of another, it is unlawfull, and a good cause of challenge of such of the Jury as shall be so on the one part informed; & every Jury must be indifferent, as he stands unsworn.

CAP. LXXVII.

Of Barretry.

SEE the first part of the Institutes, Sect. 701. Verb. Barretors. See the Statute of Ragman temps E. 1. whereby the Commission of Trailebaston is raised. It is thus provided. Et pur ceo q̄ en tiels maners de querelles doit le court le roy ēe favourable, voet le roy, & enjoint les Justices, q̄ nul enquerelant ne respoignant ne soit surprise nenchelon per Hocketours, ou Barretours, pou que le verite ne soit ensue.

Vet. Mag. Chan.
cap. 28. 2. part.

Hocketors or Hocquours is an ancient French word for a Knight of the Post, (worthy to be knit to a post) a decayed man, a basket-carrier.

For Barretors, see the first part of the Institutes, *ubi supra*.

CAP. LXXIX.

Of Riots, Routs, Unlawfull Assemblies,
Forces, &c.

Riotum cometh of the French word Riote, i. Rixari: and in the Common law signifieth, when three or more do any unlawfull act, as to beat any man, or to hunt in his Park, Chase or Warren, or to enter or take possession of another mans land, or to cut or destroy his corn, grasse, or other profit, &c.

* Latine Turba comes est discordia vulgi;

Namq; à turbando nomen sibi turba recepit.

Lamb. int. Leg.

Inz ca. 13, 14, 15.

Vide Alvered.

cap. 26.

* Turma quasi torrena.

* Rota is deribed of the French word Rout, and properly in law signifieth when three or more do any unlawfull act for their own or the common quarrell, &c. As when Commoners break down Hedges or Pales, or cast down Ditches, or Inhabitants for a way claimed by them, or the like.

An unlawfull assembly is when three or more assemble themselves together to commit a Riot or Rout, and do it not. Prædones autem nominamus usque numerum septem virorum; deinde (quousque numerus 35 coaluerit) * Turmam (Saxonice *hloib*) dicimus; numerus si excreverit, exercitum vocamus, *hlothbora*, to be quit of unlawfull assemblies.

One may commit a Force. But of this, that I may not unprofitably repeat, you may read at large Fitzherbert, and those others that have written of this Argument.

Regula.

Interest regi habere subditos pacatos. Vis legibus est inimica. See Lib. 5. fo. 91, & 115. Lib. 11. fo. 82. See the first part of the Institutes, Sect. 431, 440. Custum. de Norm. cap. 52. fo. 66, 67.

CAP. LXXX.

Of Quarrelling, Chiding, or Brawling by words
in Church or Church-yard.

5 E. 6. cap. 4.

The offender being a Lay-man, is to be suspended by the Ordinary ab ingressu Ecclesiæ; and being a Clerk, from the ministracion of his Office, so long as the Ordinary thinks meet, according to the fault.

CAP.

CAP. LXXXI.

Of Smiting, or laying violent hands upon another in Church or Church-yard.

The offender shall be deemed ipso facto excommunicate, and excluded from the company of Christs congregation.

§ E. 6. ubi supra
V. Lib. 6. fo. 29. b
Grenes case. fin.

CAP. LXXXII.

Of malicious striking with any weapon, or drawing of any weapon in Church or Church-yard, to the intent to strike another, &c.

The offender being convict by the oath of twelve men, or by his own confession, or by two lawfull witnesses, before Justices of Assize, Justices of Oier and Terminer, or Justices of Peace in their Sessions, shall lose one of his ears: and if he hath no ears, to be marked in the cheek with a hot Iron with the Letter F, and ipso facto be excommunicate.

§ E. 6. ubi sup.
* Note the disjunctive.
Int. leg. Inz ca. 6.
Qui in templo
pugnauerit 120
solidis noxiam
facito.
Dier 23 Eliz. 177.
Case ultim.

CAP. LXXXIII.

For striking, &c. in any of the Kings Courts of Justice: and for striking, &c. in any of the Kings Houses, &c.

SEE before in the Sixty fifth Chapter of Dispensation, that is, Crimen commissiois.

CAP.

C A P. LXXXIV.

Against Fugitives, or such as depart out of the
Realme without license, and such as are beyond Sea, and
return not upon command.

Ovidius.

*Omne solum forti patria est, ut piscibus equor,
Et volucris vacuo quicquid in orbe patet.*

12 R. 2. ca. 15.

25 H. 8. cap. 19.

1 Eliz. c. 1. revive.

1 Jac. cap. 4.

3 Jac. cap. 5.

IT is first to be seen of Acts in Parliament published in print, which of them are abrogated and repealed, and which of them stand in force. The statute of 5 R. 2. cap. 2. is repealed by the statute of 4 Jac. cap. 1. And the statutes of 13 Eliz. cap. 3. & 14 Eliz. cap. 6. are expired. The statute of 12 R. 2. Such as passe the sea, or send out of the Realme to provide or purchase any benefice of holy Church, with cure or without cure, are in danger of a Premunire. No person resistant within any of the Kings Dominions shall depart out of any of those Dominions, to any Visitation, Congregation, or Assembly for Religion.

Anno 1 Jac. cap. 4. and 3 Jac. cap. 5. Against going or sending of children to any Seminary beyond Sea, and against the departure out of the Realme (without license) of any children not being Souldiers, Mariners, Merchants, or other Apprentices or Factors, for any cause whatsoever. And anno 3 Ja. ca. 4. against imposing felony upon any subject that shall depart this Realme, to serve any Prince, State, or Potentate; or shall passe over the Seas, and there shall voluntarily serve any such foreign Prince, State, or Potentate, not having before his or their going or passing, taken the Oath mentioned in that Act. And likewise imposing felony upon any Gentleman or person of higher degree, or any person which hath borne or shall bear any office, or place of Captain, Lieutenant, or any other place, charge or office in Camp, Army, or Company of Souldiers, or Conductors of Souldiers, that shall go or passe voluntarily out of this Realme, to serve any such foreign Prince, State, or Potentate, or shall voluntarily serve any such foreign Prince, State, or Potentate, before he be bound by Obligation with two sureties, as in that Act is prescribed. But it is provided that upon the attainder of any such felony, no forfeiture of dowry or corruption of blood shall ensue. Reade over these statutes, for they are so plainly penned as they need no exposition.

Pert unto this, two things fall into consideration; First, what Acts of Parliament not published in print in our Books of Statutes do prohibit men to passe the Seas without license. And secondly, what may be done therein by the Common law of England.

At the Parliament holden at Clarendon, Anno 10 H. 2. called the Assise of Clarendon, facta est recognitio cujusdam partis consuetudinum & libertatum antecessorum Regis: & ca. 4. sic recognitum est. Archiepiscopis, Episcopis, & personis regni non licet exire regnum absque licentia Domini Regis; & si exierint, si Regi placuerit, securum eum facient, quod nec in eundo nec in redeundo, nec moram faciendo, perquirent malum seu damnum Domino Regi vel regno.

This appeareth in it self to be but a recognition, or declaration of the Common law: and this is manifestly proved by the Wit in the Register at the Common law, pursuing in effect the very words of the said Act of 10 H. 2. Breve de securitate inveniendā, quod se non divertat ad partes externas sine licentia Regis.

Regist. fo. 89, 90.
F. N. B. 85.

And

And hereupon there ariseth a diversity between one of the Clergie and one of the Laity: for a man of the Church may be compelled to put in surety, that he shall not depart the Realme without the Kings license, nor shall there attempt any thing in contempt or prejudice of the King or of his people. And this Writ is directed to the Sheriffe, and saith, *Quia datum est nobis intelligi, quod A. B. Clericus versus partes externas ad quamplura nobis & quampluribus de populo nostro præjudicialia & damnosa ibid. prosequend, &c.* Whereby it appeareth, that this Writ lyeth only in the case of an Ecclesiasticall person, or a man of the Church, and that for three reasons. First, for that they had the cure of souls, and therefore ought to be resident. Secondly, for that they, maintaining soaine authority, impugned many of the Kings laws, to the great prejudice of the Laity. Thirdly, they had no temporall lands, therefore they found sureties.

There is another Writ in the Register, that is to be directed to the party himself, viz. either to the Clerk, or to the Layman, wherein the King reciting, *Quod datum est nobis intelligi, quod tu vers. partes externas absque licentia nostra clam destinas te divertere, & b quamplurima nobis & coronæ nostræ præjudicialia ibid. prosequi intendas, &c. sub periculo quod incumbit prohibemus, ne vers. partes externas absque licentia nostra speciali aliquo modo te divertas, nec quicquam ibid. prosequi, &c.* And upon this Writ the party is not to finde any surety, for there is no word of surety in this Writ. And if the subject cannot be found, the King may make a Proclamation under the Great Seale to the effect of the Writ last mentioned.

Now let us peruse such authorities as we finde in Records or Books of Law in serie temporis, taking some few examples for many that might be cited.

^a *Willielmus Marmion Clericus profectus est ad Regem Franciæ sine licentia Domini Regis, & propterea finem fecit, &c.* Note the going over without any prohibition precedent unlawfull.

^c *Nul grand Seignior ou Chivalier de nostra Realm ne doit prender chemin (daler hors de Realm) sans nostre conge, car issint purroit le Realm remain disgarne de fort gés.* And the Nobles & Peers of the Realm are of the Kings great Council.

By this it appeareth, that these are prohibited to goe beyond sea without license: but others of the inferiour Laity may goe without license, if they travele not to the abovesaid prohibited ends. But ^e those of the Laity and men of the Church also being beyond sea, may be commanded by the Kings Writ, either under the Great Seale, or Privie Seale, in fide & ligeantia, &c. to return into the Kingdom (though he be not there to any of the abovesaid prohibited ends;) and if he return not, for his contempt his lands and goods shall be seised, quousque, &c. ^h Commandement was given to an Ecclesiasticall person residing at Rome to return into England.

ⁱ *Quamplurimæ literæ Domini Regis missæ Romæ, ad revocand̄ diversos Clericos ibid. commorantes, qui quamplurima attemptarunt in dedecus Regni, præcipient etiam, quod redeant ad festum eis appunctuatum: & pro eo quod non venerunt, præceptum fuit vicecomiti quod eos capiat. Et Rogerus de Holme Præbendarius, in Ecclesia Sancti Pauli London captus per Vic' London, & arenatus, examinatus, & convictus mittitur prisonæ Turris London ibid. moraturus, &c.*

^k *Rex proclamari fecit in omnibus comitatibus Angliæ, quod ne quis comes, baro, miles, religiosus, sagittarius, aut operarius, &c. extra regnum se transferat, sub poena arrestationis & incarcerationis.*

Herein it is to be observed, that seeing by law, no Carle, Baron or Knight, (as Britton saith) nor religious, &c. ought to goe out of the Realme, a generall Proclamation declarative will serve to aggravate their offence: but otherwise it is of those that are not prohibited by law, they must have such a particular Writ or Proclamation as is abovesaid.

^l *Sir Matthew Gourny Knight was prohibited by the Kings Writ to depart the Realm, and to serve in wars expressly inhibited by the King, which not withstanding he did. Now the Record saith, Quia Matheus Gourny miles contra defensionem Regis transfretavit, & se guerris sibi per regem inhibitis immiscuit, tam in corpore quam in bonis m forisfecit Regi manerium de Corimallet simul cū una Carucaī terræ, &c.*

Vide simile Reg. gift. 61, &c. A. jura Regia. Regist. fo. 193. De licentia transfratandi pro religiosis.

^a Regist. 89, 90. F.N.B. fo. 85.

^b So as neither this Writ, nor a Proclamation in nature of this Writ, ought to be granted, but where the party intends to depart the Realme for these ends.

^c F.N.B. fo. 85. b. Vide Dier & Eliz.

165. b.

^d Rot. Finium

6 H. 3.

Et Rot. claus.

7 H. 3. m. 5.

^e Britton temps

E. 1. fo. 282, 283.

Vide le statut de

5 R. 2. ca. 2. Seigniors except out

of that statute.

^f See the first

part of the Instit.

Sect. 164. f. 110. a.

27 August 5 H. 4.

De son grand

council.

^g An. 19 E. 2. in

Scac.

2 & 3 Ph. & Mar.

Dier 128. pl. 61.

Will. de Britaine

Countee de Rich-

monds case.

^h Rot. claus.

4 E. 3. m. 38.

ⁱ Hil. 24 E. 3. co-

ram Rege, Rot. 13.

^k Dorset. claus.

25 E. 3. m. 18.

^l Mic. 39 E. 3.

coram Rege.

Rot. 97. Somers.

Rot. Vasc. 10 E. 3.

m. 29.

^m By seizure and imprisonment.

Rex

^a Rot. Pat.
40 E. pt. 1. nu. 40.
Mich. 41 E. 3.
Coram rege,
Rot. 34. Priorissa
Sancti Barth. &
de novo Castro
quod mare non
transibit, &c.
^a Nota (legum
suarum) ut supra.
^b F. N. B. 85. f.

^a Rex licentiam dedit Abbati de E. quod proficisci possit ultra mare ad visitandum caput Sancti Johannis Baptistae Ambiani, corpora trium regum Coloniz, feretrum Sancti Francisci in & Sanctum Jacobum in Galicia, ita quod non prosequetur aut procurabit quicquam in prejudicium regis, aut legum suarum, sicut idem Abbas in praesentia Cancellarii regis per juramentum promisit.

Note that Ecclesiasticall persons could not goe beyond sea on Pilgrimage without licence, nor doe any thing in prejudice of the King, or his laws.

^b And it is to be observed, that the King may grant licence to travell beyond the seas, either under the Great Seale, Privy Seale, or Privy Signet; but he cannot recall one that is beyond sea, but by the Great Seale or Privy Seale.

But for avoiding of tediousness, and heaping many to one end, let us descend to later times.

^c The Letters under the Great Seal or Privy Seal to recall any from beyond sea, ought to be setved by some ^d messenger, who upon his oath is to make a certificat thereof in the Chancery, and from thence a Micitimus to be sent into the Exchequer, and thereupon a Commission to be granted to seise the lands and goods of the Delinquent.

^e Mich. 12 & 13 Eliz. it was resolved by all the Justices (except two) that a Merchant of London departing the Realm, to the intent to live freely from the penalty of the law, and out of his due obedience to the Queen, and not for any Merchandise, that it was no contempt to the Queen, for Merchants were excepted out of the said statute of 5 R. 2. cap. 2. and by the Common law Merchants might pass the sea without licence, though it were not to merchandise.

It is holden, and so it hath been resolved, that divided Kingdomes under several Kings in League one with another are sanctuaries for servants or subjects flying for safety from one Kingdom to another, and upon demand made by them, are not by the laws and liberties of Kingdomes to be delivered: and this (some hold) is grounded upon the law in Deuteronomy, Non trades servum domino suo, qui ad te confugerit.

When Queen Elizabeths Ambassadour lieger in France, anno 34. of her reign, demanded of the French King Morgan and others of her subjects, that had committed treason against her; the answer of the French King to the Queens Ambassadour is truly related in these words. Si quid in Gallia machinarentur, regem ex jure in illos animadversurum; sin in Anglia quid machinati fuerint, regem non posse de eisdem cognoscere, et ex jure agere. Omnia regna profugis esse libera; regum interesse, ut sui quisque regni libertates tuerentur. Imo Elizabetham non ita pridem in suum regnum Mounigomerium, principem Condzum, et alios e gente Gallica admisisse, &c. and so it resolved.

King H. 8. in the 28. year of his reign being in league with the French King, and in enmity with the Pope, who was in league with the French King, sent Cardinall Pool Ambassadour to the French King, of whom King H. 8. demanded the said Cardinall being his subject, and attainted of treason, and to that end caused a treatise to be made (which I have seen) that so it ought to be done jure gentium: sed non prevaluit. But Ferdinando King of Spain, upon request made by H. 7. to have Edmund de la Pool Earl of Suffolk, attainted of High Treason by Parliament anno 19 H. 7. at the first intending to observe the privilege and liberty of Kings, to protect such as came to him for succour and protection, delivered him not; yet in the end, upon the earnest request of H. 7. and promise that he would not put him to death, caused the said Earle to be delivered unto him, who kept him in prison, and confirming his promise to be personall to himself, commanded his son Henry after his decease to execute him, who in the fifth year of his reign upon cold blood performed the same.

We could add more examples of this kind; but (to speak once for all) having purposed

^c Dier Hil.
² Eliz. 176. the
case of Bartheu
and the Dutches
of Suffolk.
^d See 10 H. 4. 5.
Englefields case.
Lib. 7. fo. 11.
See the 1. part of
the Instituc.
Sect. 102.
^e Mich. 12 &
13 El. Dier f. 296.
& Pasc. 23 Eliz.
fo. 375. 5.

Deut. c. 23. v. 15.

Camden Elizab.
pa. 35.

An. 21 H. 7.
Rot. par. 19 H. 7.

purposed to give some tast of every thing pertinent or incident to such things as we have undertaken to treat of, these shall suffice.

See the statute of 3 Car. an Act to restrain the passing and sending of any to be lawfully byed beyond the Seas.

* *Flemenesfreme*, sive *Flemenesfrenthe*, interpretatur, *Catalla fugitivorum*.

3 Car. ca. 2.
Mich. 10 H. 4.
Coram Rege,
Rot. 59. Hertford.

CAP. LXXXV.

Against Monopolists, Propounders, and Projectors.

It appeareth by the Preamble of this Act (as a judgement in Parliament) that all Grants of Monopolies are against the ancient and Fundamentall laws of this Kingdome, and therefore it is necessary to define what a Monopoly is.

A Monopoly is an Institution, or allowance by the King by his Grant, Commission, or otherwise to any person or persons, bodies politick or corporate, of or for the sole buying, selling, making, working, or using of any thing, whereby any person or persons, bodies politick or corporate, are sought to be restrained of any freedom or liberty that they had before, or hindered in their lawfull trade.

For the word Monopoly, dicitur, *ἄνδρὶ μόνῳ*, i. solo, *ἢ πωλεῖσθαι*, i. vendere, quod est, cum unus solus aliquod genus mercaturæ universum vendit, ut solus vendat, pretium ad suum libitum statuens: hereof you may read more at large in that case. And the law of the Realm in this point is grounded upon the law of God, which saith, Non accipies loco pignoris inferiorem & superiorem molam, quia animam suam apposuit tibi, Thou shalt not take the nether or upper millstone to pledge, for he taketh a mans life to pledge. Whereby it appeareth that a mans trade is accounted his life, because it maintaineth his life; and therefore the Monopolist that taketh away a mans trade, taketh away his life, and therefore is so much the more odious, because he is vir sanguinis. Against these Inventers and Propounders of evil things, the holy Ghost hath spoken, Inventores malorum, &c. digni sunt morte.

That Monopolies are against the ancient and Fundamentall laws of the Realm (as it is declared by this Act) and that the Monopolist was in times past, and is much more now punishable, for obtaining and procuring of them, we will demonstrate it by reason, and prove it by authority.

Whatsoever offence is contrary to the ancient and Fundamentall laws of the Realm, is punishable by law: but the use of a Monopoly is contrary to the ancient and Fundamentall Laws of the Realm: therefore the use of a Monopoly is punishable by law.

That offence which is contrary to the ancient and Fundamentall laws is malum in se. The Poin is proved by this declaration in Parliament.

The liberty that the subject hath to go to any Clerk in the Kings Court cannot be restrained but by Parliament.

In 50 E. 3. John Peachie of London was severely punished for procuring a licence under the Great Seal, that he only might sell sweet wines in London.

See in the Preambles of 9 E. 3. cap. 1. 25 E. 3. cap. 2. 27 E. 3. & 28 E. 3. Stat. Scap. 2 R. 2. ca. 1. See the statute of Magna Chart. ca. 3. 31 E. 3. cap. 10. 7 H. 4. ca. 9. and 12 H. 7. ca. 6. 1 & 2 Ph. & Mar. ca. 14. Rot. Parl. 1 R. 2. nu. 20. 4 R. 2. nu. 39. 5 R. 2. nu. 89. Fortescue cap. 35, 36. One of the Articles where with William de la Pool Duke of Suffolk was charged, was for procuring of divers liberties in derogation of the Common law, and hindrance of Justice: Note this is an offence punishable.

4 The statute of
21 Jac. ca. 3.
Rom. 1. 30. In-
ventores malorū.

b A Monopoly
described.
See the Expositi-
on upon Magna
Charta c. 29, & 30
in the second part
of the Instit.
c Trin. 44 Eliz.
Lib. 11. f. 84, 85. le
case de Monopo-
lies.
Deut. ca. 14. v. 6.

Rom. 1. 30.
Commercium juve
gentium commune
esse debet, & non
in Monopolium &
privatum pauc-
lorum quantum
convertendum.
Iniquum est alios
permittere, alios
inhibere merca-
turam.
11 H. 7. 11.
W. 1. cap. 27.

Rot. Par. 50 E. 3.
nu. 33.

Rot. Parl.
28 H. 6. nu. 30.

Mich. 2 & 3 El.
Dier Manuscript
not printed.

Stat. de 5 Eliz.

King Philip and Queen Mary by their Letters Patents granted to the Mayor, Bailiffs and Burgeses of Southampton & their successors, for that King Philip first landed there) that no wines called *Palmites*, brought into this Realm from the parts beyond the seas by any Liege-man or Alien, should be discharged or landed in any other place of the Realm, but only at the said town & port of Southampton, with a prohibition, that no person or persons shall do otherwise upon pain to pay treble custome. And it was resolved by all the Judges of England, that this grant made in restraint of the landing of the same wines was against the laws and statutes of this Realm, viz. *Magna Charta*, 29, 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. cap. 2. 27. & 28 E. 3. Statute of the Staple, 2 R. 2. cap. 1. and others; and also that the assessment of treble custome was against law, and merely void. And after at the Parliament holden in Anno 5 Eliz. the Patent, as to Aliens, was by a private Act confirmed by Parliament, & not for English.

Trin. 41 Eliz. *Coram Rege*, Rot. 92. Int. *Davenant & Hurdys* in trespassse. Trin. 44 Eliz. in Lib. 11. fo. 84, 85, &c. *Edward Darcies* case. Hil. 7 Jacobi in Lib. 8. fo. 121, 122, &c. the case of the city of London.

The judgement in the said case of Monopolies cited before, Trin. 44 Eliz. was the principal motive of the publishing of the Kings Book mentioned in the Preamble of this Act, and that Book was a great motive of obtaining the royall assent to this Act of Parliament whereof we are now to speak. This Act moved from the house of Commons: the Act is long and in print, and need not here to be rehearsed; yet will we peruse and explain the words in the several branches of the Act.

¶ By his Grant, Commission, or otherwise.] These words [or otherwise] are of a large extent, and are well warranted by this Act, the words whereof extend not only to all Proclamations, Inhibitions, Restraints, and warrants of assistance of the King, but all Inhibitions, Restraints, and warrants of assistance of all or any of the Privy Councell or any other: and all other matters or things whatsoever either of the King, or of all or any of his Privy Councell, to the instituting, erecting, strengthening, furthering, or countenancing of the sole buying, selling, &c. or any of them, are declared to be altogether contrary to the laws of this Realm, &c. ut in statuto. This Act herein, and in the residue thereof, is forcibly and vehemently penned for the suppression of all Monopolies: for Monopolies in times past were ever without law, but never without friends.

¶ Sole.] This word [sole] is to be applied to five severall things, viz. buying, selling, making, working, and using; four of which are special, and the last, viz. [sole using] is so general, as no Monopoly can be raised, but shall be within the reach of this Statute, and yet for more surety these words [or of any other Monopolies] are added: and by reason of these words [sole using] divers provisions are made by this Act, as hereafter shall appear.

¶ Of any thing.] As the words before were general, so these words [of any thing] are of a large extent. *Res enim generalem habet significationem, quia tam corporea quam incorporea, cujuscunque sunt generis, naturæ, five speciei, comprehendit: and this word causeth some exceptions hereafter to be made, whereof we shall speak in their proper place.*

¶ Whereby any person or persons, &c.] For this see the statute of *Magna Charta*, ubi supra: and this clause is impliedly warranted by these words [or of any other Monopolies] in the first clause of the Preamble.

¶ Shall be for ever hereafter examined, heard, tried and determined by and according to the Common laws of this Realm, & not otherwise.] This act having declared against all monopolies,

lies, &c. to be void by the Common law, hath provided by this clause, that they shall be examined, heard, tried & determined in the Courts of the Common law according to the Common law, and not at the Council Table, Star chamber, Chancery, Exchequer chamber, or any other Court of like nature, but only according to the Common laws of this Realm, with this negative, and not otherwise. For such boldness the Monopolists took, that upon at the Council Table, Star chamber, Chancery and Exchequer chamber petitions, informations and bills were preferred in the Star chamber, &c. pretending a contempt for not obeying the commandements and clauses of the said grants of Monopolies and of the proclamations, &c. concerning the same: for the preventing of which mischief this branch was added.

¶ That all person and persons, bodies politick and corporate whatsoever, which now are, or hereafter shall be, shall stand and be disabled and incapable, &c. : This branch for further extirpation of all Monopolies, disableth all men, &c. to have, that is, to take any Monopoly, or to use, exercise or put in ure, any Monopoly, &c. where by the will and desire of the Poet is granted.

Funditus extirpa Monopolas & Nomopolas ;

Hic labor, hoc opus est ; Hercule major eris.

Paucorum nocuit scelerata licentia multis,

Argento murat dum Monopola piper.

¶ If any person or persons after the end of forty daies next after the end of this present Session of Parliament shall be hindred, grieved, disturbed, or disquieted, &c.]

By this branch six things are provided and enacted. 1. Remedy is given to the party grieved at the Common law by action or actions to be grounded upon this statute. 2. This remedy may be had in the Court of the Kings Bench, Common Pleas and Exchequer, or any of them, at the election of the party grieved. 3. The party grieved shall recover treble damages, and double costs. 4. No essoin, protection, wager of law, aid prayer, privilege, injunction, or order of restraint to be allowed in any such action. By [aid prayer] is intended as well the *Writ de domino rege inconsulto*, as the usual form of aid prayer, for both are to one end; and [order of restraint] was added, for the Council Table, Star chamber, Chancery, Exchequer chamber, and the like.

¶ 5. If any person or persons shall after notice given, &c. cause or procure any such action to be stayed or delayed before judgement, by colour or means of any order, warrant, power or authority, save onely of the Court wherein such action shall be brought and depending, the person or persons so offending shall incur the danger of Premunire, &c.

This clause extends to the Privy council, Star chamber, Chancery, Exchequer chamber, and the like, and likewise to those that shall procure any warrant, &c. from the King, &c. and so it was resolved by a Committee of both Houses before this Bill passed; but it extendeth not to the Judges of the Court before whom any such action shall be brought; for before judgements, daies must be given by orders of Court, &c.

¶ 6. Or after judgement had upon such action, shall cause or procure execution of or upon any such judgement to be stayed by colour or means of any order, warrant, power or authority, save only by writ of Error and Attaint, the person or persons so offending shall incur the danger of Premunire, &c.

This clause is more general then the former, being the fifth clause, for this extendeth also to the Judges of the Court where the action is brought or depending, if any stay or delay be used by them after judgement, and so it was resolved as is aforesaid.

Concerning new
manufactures
and heretofore
granted, &c.

Pasch. 15 Eliz. in
the Exchequer
Chamber, Bircots
case.

Rot. Parl. 21 E. 4.
nu. 29.
22 E. 4. ca. 5.
7 E. 6. ca. 6.
1 Jacobi, ca. 5.

Concerning new
manufactures
hereafter to be
granted, &c.

There be in this Act concerning Monopolies as sole buying, &c. many Provisions. The first is, That this Act shall not extend to any Letters patents or grants of privilege heretofore made of the sole working or making of any manner of new manufacture; but that new manufacture must have seven properties. First, it must be so new, that it was never used before. Secondly, it must be granted to the first and true inventor. Thirdly, it must be of such manufacture, which any other at the making of such Letters patents did not use: for albeit it were newly invented, yet if any other did use it at the making of the Letters patents, or grant of the privilege, it is declared and enacted to be void by this Act. Fourthly, the privilege must not be contrary to law: such a privilege as is consonant to law, must be substantially and essentially newly invented; but if the substance was in use before, and a new addition thereunto, though that addition make the former more profitable, yet is it not a new manufacture in law: and so was it resolved in the Exchequer chamber Pasch. 15 Eliz. in Bircots case for a privilege concerning the preparing and melting, &c. of lead ore: for there it was said, that that was but to put a new button to an old coat; and it is much easier to add then to invent. And there it was also resolved, that if the new manufacture be substantially invented according to law, yet no old manufacture in use before can be prohibited. Fifthly, not mischievous to the State by raising of prices of commodities at home. In every such new manufacture that deserves a privilege, there must be Urgens necessitas, and evidens utilitas. Sixthly, not to the hurt of trade. This is very material and evident. Seventhly, not generally inconvenient. There was a new invention found out heretofore, that Bonnets and Caps might be thickened in a spinning-mill; by which means more might be thickened and fulled in one day then by the labours of fourscore men, who got their livings by it. It was ordained that Bonnets and Caps should be thickened and fulled by the strength of men, and not in a spinning-mill, for it was holden inconvenient to turn so many labouring men to idleness. If any of these seven qualities fail, the privilege is declared and enacted to be void by this Act: and yet this Act, if they have all these properties, set them in no better case then they were before this Act.

The second Proviso concerneth the privilege of new manufactures hereafter to be granted: and this also must have seven properties. First, it must be for the term of fourteen years or under. The other six properties must be such as are aforesaid: and yet this Act maketh them no better then they should have been if this Act had never been made, but only except and exempt them out of the Purview and penalty of this Law.

The cause wherefore the privileges of new manufactures either before this Act granted, or which after this Act should be granted, having these seven properties, were not declared to be good, was, for that the reason wherefore such a privilege is good in law is, because the inventor bringeth to the Commonwealth a new manufacture by his invention, cost and charges, and therefore it is reason that he should have a privilege for his reward (and the encouragement of others in the like) for a convenient time: but it was thought that the times limited by this Act were too long for the private, before the Commonwealth should be partaker thereof; and such as served such privileged persons by the space of seven years in making or working of the new manufacture (which is the time limited by Law of Apprenticeship) must be Apprentices or Servants still during the residue of the privilege, by means whereof such numbers of men would not apply themselves thereunto, as should be requisite for the Commonwealth, after the privilege ended. And this was the true cause wherefore, both for the time passed & for the time to come, they were left of such force as they were before the making of this Act.

The third Proviso is, that this Act shall not extend to be prejudicial to any grant or privilege, power or authority heretofore made, granted, allowed or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force. This was added, for that the City of London & other Cities & Boroughs, &c.

ec. have some privileges for buying, selling, &c. by Acts of Parliament. For example, The statute of 1 & 2 Ph. & Mar. giveth a Privilege to Cities, Boroughs, Towns corporate & Market Towns, for the sale by retale of certain wares and Merchandises, and some other Acts of Parliament in like case: all which do prove that such privileges could not be granted by Letters patents. But specially this clause was added in respect of the generality of these words [sole using.]

The fourth Proviso, worded also; and it is hereby further intended, declared and enacted, that this Act, doth not in any wise extend to be prejudicial unto the City of London, &c.

By this Proviso, not only the Grants, Charters and Letters Patents to any City or Town Corporate, &c. but also the customs used within the same, are excepted out of this Act: which seemeth to be more than need, because the first clause of the purview of this Act doth extend but to Commissions, Grants, Licences, Charters and Letters Patents.

The fifth Proviso doth except out of the Purview and penalty of this Statute four things, but leaveth them of the like force and effect, & no other, as if this Act had never been made. First, the privilege concerning printing made, or hereafter to be made. Secondly, Commissions, Grants and Letters Patents made, or hereafter to be made, for or concerning the digging, making or compounding of Salt-peter or Gunpowder. Thirdly, or the casting or making of Ordnance, or shot for Ordnance. Fourthly, Grants and Letters Patents heretofore made, or hereafter to be made, of any Office or Offices heretofore erected, made, or ordained, and now in being, and put in execution, (other then such Offices as have been decreed by any his Majesties Proclamations.) So as to the thing by this Branch excepted, four things are required. First, that it be an Office. This extendeth only to lawfull Offices for divers causes. 1. It was necessary to except lawfull Offices in respect of these words [sole using.] 2. Offices are duties, so called, to put the Officer in mind of his duty. 3. That which is void and against Law, is no duty, unless it be not to use them. 4. Such as are erected against Law, are Monopolies and Oppressions of the people, and no Offices: In Acts of Parliament lawfull Offices are intended, as in like cases hath been often adjudged: therefore unlawfull Offices are all taken away by this Act, and lawfull Offices remain and continue.

Secondly, that it be an Office heretofore erected. By this Act the erection of all new Offices, which were not erected before this Act, are wholly taken away. Thirdly, that it be now in being, and put in execution. Though the Offices were erected before this Act, yet if it were not in being and put in execution on the 19 day of February in the 21 year of the reign of King James (at what time this Parliament began) it is clearly taken away by this Act.

Fourthly, that it be such an Office as hath not been decreed, (so is the Record of Parliament, and not [decreed] as it is in the printed book) by any of his Majesties Proclamations: for all such Offices as be decreed, that is, either forbidden or prohibited by any of his Majesties Proclamations, or where the party grieved is left to his remedy at the Common law by any Proclamation, they be also decreed, for being contrary to the laws of this Realm, as it is declared and enacted by this Act, they are also decreed with a witness, and can never be granted hereafter.

The fifth Proviso concerning the making of Allom, or Allom-mines, needeth not, for they belong to the Subject in whose ground soever the Ore is: & therefore any privilege thereof cannot be granted but in the Kings own ground.

The sixth Proviso concerns the Hostmen of New-cattle, &c. This clause was inserted in respect of these words [sole using.]

The rest of the Provisoes concern particular persons, and do exempt and except certain supposed privileges out of the Purview and penalty of this Law, but leave them of like force and effect as they were before the making of it.

But it is to be observed, that all the Provisoes after the sixth, extend only to the supposed privileges therein particularly mentioned, already granted, and not to any to be granted hereafter.

1 & 2 Ph. & Mar.
cap. 7.

Lit. Sect. 731.
Pl. com. 246. b.
11 H. 4. 80.
4 E. 4. 31. pl. 2.

See the Proclamation bearing date 10 July An. 19 Jac. Regis, and another Proclamation bearing date 20 Martii An. 19 Jac. Regis.

CAP. LXXVII.

Against those that obtain power to dispense with penal laws, and the forfeitures thereof.

The statute of
21 Jac. cap. 3.

In Exilio Hu-
gonis.

Rot. Parliam.
50 E. 3. nu. 17,
& 28.
Sec 28 H. 6. nu.
50. before
The Purvien of
the Act of 21 Ja.
ca. 3.
The offence de-
scribed.

IT appeareth by the Preamble of this Act, that all Grants of the benefit of any penal law, or of power to dispense with the law, or to compound for the forfeiture, are contrary to the ancient fundamental laws of this Realm.

It was one of the Articles wherefore the Spencers in the reign of King E. 2. were sentenced, that they procured the King to make many Dispensations. Per lour malveis counsell defeasancee q le Roy ad grant p Parliamēt p bone advice.

In 50 E. 3. Richard Lions a Merchant of London, and the Ld. Latimer, were severally sentenced in Parliament for procuring of Licences and Dispensations to transport Wolls, &c.

IT is declared and enacted, that all Commissions, Grants, Licences, Charters and Letters patents, heretofore made or granted to any person or persons, bodies politick or corporate, of any power, liberty or faculty, to dispense with any others, or to give licence or toleration to doe, use or exercise, any thing against the tenure or purport of any Law or Statute, or to give or make any warrant for any such dispensation, licence or toleration, to be had or made, or to agree or compound with any others for any penal tie or forfeitures limited by any statute, or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty or summe of money, that is or shall be due by any Statute before judgement thereupon had; and all Proclamations, Inhibitions, Restraints, Warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering or countenancing of the same or any of them, are altogether contrary to the Laws of this Realm; in no wise to be put in execution.

And shall be forever hereafter examined, heard, tried and determined, by and according to the Common Laws of this Realm, and not otherwise, &c.

Provided also, that this Act shall not extend to any Warrant or Privy Seal made or directed, or to be made or directed by his Majesty, his Heirs or Successors, to the Justices of the Courts of Kings Bench, Common Pleas, Barons of the Exchequer, &c. and other Justices for the time being, having power to hear and determine, &c. to compound, &c.

This Act moved from the House of Commons. Now let us peruse, first, the words of the Purvien of this Act, and secondly, of this Proviso.

It and by the Purvien five things are declared and enacted to be void, and contrary to the ancient fundamental laws of this Realm. First, all Commissions, Licences, Charters and Letters patents of any power, liberty or faculty, or to give licence or toleration to doe, use or exercise any thing against any Law or Statute. The reason hereof is notably expressed by the resolution of all the Judges of England, in the case of penal statutes, whereminto we refer you.

Hil. 2 Jac. lib. 7.
fo. 36. b. the case
of penal statutes.

¶ 2 Or to give or make any warrant for any such dispensation, licence, or toleration.] For this branch also, see the said case of penall Statutes, ut supra.

¶ 3 Or to agree or compound with any others for any penalty or forfeitures limited by any statute.] By this branch, all Commissions to agree or compound with any others for any penalty or forfeiture limited by any statute, are declared to be void, and against the ancient fundamental laws of the Realm. The great inconvenience hereby appeared in the proceedings of Empson and Dudley, in the reign of King H. 7. who had the Office of Masters of the forfeitures, and by colour of their Commission and Office, did most intolerably and unlawfully oppress, burden, and depauperate the Subjects. Let them which follow their steps be afraid of their fearful end, Quorum vestigia sequuntur, eorum exitus perhorrescant. The like oppression was used by certain Commissioners for compositions to be made for offences committed against penall statutes in the reign of Queen Mary. This branch hath stricken at the root, and prevented this mischief for ever hereafter.

¶ 4 Or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute before judgement thereupon had.] This branch declareth not only the grant to be void, and against the laws of this Realm, (for the which, see the resolution of all the Judges in the said case of penall statutes, ubi supra) but the promise thereof also. And the reason that the Judges yield there is notable, in these words. For that in our experience it maketh the more violent and undue proceeding against the Subject, to the scandall of Justice, and offence of many. So as the grant or promise of any forfeiture before judgement is both against law, and inconvenient. And if it be so in case of a forfeiture or penalty, much more in case of life and death, for the forfeiture, &c. of any man to be begged, before he be duly and lawfully attainted. For, as the Judges say, there is the more violent and undue proceeding against the Subject, to the scandall of Justice, and the offence of many: and therefore such beggars are offenders, worthy of severe punishment.

Against these hunters for blood the Prophet speaketh thus, Perit sanctus de terra, & rectus in hominibus non est; omnes in sanguine insidiantur, vic fratri suum ad mortem venatur. There is not a godly man upon earth, there is not one righteous amongst men; they all lye in wait for blood, and every man hunteth his brother to death. Micah 7. 1.

¶ 5 And all Proclamations, Inhibitions, Restraints, Warrants of assistance, and all other matters or things any way tending to the instituting, erecting, strengthening, &c.] This is the like clause, and is so to be expounded, as before hath been in the Chapter of Monopolies.

Concerning the said proviso, the Judges before whom the cause dependeth, and that have power to hear & determine the same, who are presumed to be indifferent between the King and the Subject, may by warrant or Privy Seal, &c. compound, &c. for the King onely, after plea pleaded by the defendant.

There is another proviso concerning Letters Patents, or Commissions for licensing of keeping of any Tavern, or selling, &c. of Wines, &c. or for the making of any compositions for such licenses, so as the benefit of such compositions be reserved, and applied to or for the use of his Majesty, his Heirs or Successors, and not for the private use of any other person or persons.

The report of the said case of penal statutes was a principal motive of the Kings Book, mentioned in the preamble of this Act: And that Book amongst other just and weighty causes moved the King to give his Royall assent to this Act of Parliament, &c. whereof we have spoken.

CAP.

CAP. LXXXVII.

Against Concealours (*turbidum hominum genus*)
and all pretences of Concealments whatsoever.Statut. de Anno
21 Jac. cap. 2.

THAT the Kings Majestie, his Heirs or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politick or corporate, &c.

The Act is long, and need not here be rehearsed. Yet will we peruse and explain the severall branches and parts of the Act.

Before the making of this statute, in respect of that ancient prerogative of the Crown, that *nullum tempus occurrit Regi*, the titles of the King were not restrained to any limitation of time; for that no statute of limitation that ever was made, did ever limit the title of the King to any Manors, Lands, Tenements, or Hereditaments, to any certain time. And where many Records and other Humiments, making good the estate and interest of the Subject, either by abuse or negligence of Officers by debotwring time were not to be found, by means whereof certain indigne & indigent persons prying into many ancient titles of the Crown, and into some of later time concerning the possessions of others and sundry Bishopricks, Dean and Chapters, and the late Monasteries, Chantries, &c. of persons attainted, and the like, have passed surreptitiously in Letters Patents, oftentimes under obscure and general words, the Manors, Lands, Tenements and Hereditaments of long time enjoyed by the Subjects of this Realm, as well Ecclesiastical as Temporal: Now to limit the Crown to some certain time, to the end that all the Subjects of this Realm, their Heirs and Successors, may quietly have, hold and enjoy, all and singular Manors, Lands, Tenements and Hereditaments, which they, their ancestors or predecessors, or any other by, from or under whom they claim, have of long time enjoyed; this Act was made and moved from the House of Commons, the body whereof consisteth of three parts. First, that part which above is in part rehearsed, consisteth on Three Branches.

The first part.

First, That the King, his Heirs or Successors, shall not at any time hereafter sue, impeach, question, or implead any person or persons, bodies politick or corporate, for, or in any wise concerning any Manors, &c. Secondly, Or for, or concerning the revenues, issues or profits thereof. Thirdly, Or make any title, claim, challenge, or demand, &c.

This part is exclusive and negative: and herein six things are to be observed.

1. This clause extendeth to all manner of suits, &c. either in Law, or in Equity.
2. To all manner of Courts whatsoever.
3. It extendeth not only to all manner of suits, but to all impeachments, questionings, impleadings, making of title, claims, challenges, or demands.
4. Under these words [right and title] not only bare rights and titles are comprehended, but real estates also.
5. Not only suits, &c. for or concerning any Manors, &c. but for or concerning the revenues, issues, or profits, &c. and this extendeth to the ancient demesnes of the Crown, which are mentioned to be restrained by an Act of 11 H. 4. 6. So as all Writs of Scire fac' or other proces upon any Record, all informations of intrusion, or charging any man as Bayliffe, all finding of Offices, either of intitling the King, or of information, are restrained, not only within these words [impeach or question] but also within these words [or make any title, claim, challenge, or demand] which are large and beneficiall words, and all other suits, &c. of what

Rot. Par. 11 H. 4.
nu. 23. not im-
printed.

what kind of nature soever. But this Negative clause must have Four incidents. 1. The Kings right and title must accrew unto him above threescore years past before the Nineteenth day of February in the 21 year of King James, which was the day of the beginning of this Parliament. The reason hereof was, that if any title of escheat, forfeiture, &c. accrewed within threescore years, then it should be out of this Act: for generally the time of limitation to bar the King was threescore years, but such right or title must now be in esse. 2. Unless the King or his progenitors, &c. or any under whom he or they claime, have been answered by force and virtue of any such right or title to the same, the rents, revenues, issues or profits thereof within threescore years, &c. In this branch these words [by force and virtue of any such right or title] were materially added; for otherwise if the King had been answered the rents, revenues, &c. by reason of pretext of Wardship, primer seison, extent, or the like, it might have made a doubt whether such an answering of the revenues, &c. had been within this Act; which doubt is cleared, that it must be by force or virtue of any such right or title, whereby the King impeacheth the state of the subject. 3. Or that the same have been duly in charge to his Majesty, or to the late Queen Elizabeth, within the space of threescore years. Duly in charge in judgment of law, is the roll of the pipe: for although a note before the Auditor or any other may be a mean to bring it in question, and to be put in charge, yet that is not in judgment of law said to be duly in charge, unless it be in charge in the pipe. 4. Or have stood in super of record within the said space of threescore years. It cannot stand in super, unless the thing in question were before duly in charge.

But there is a good Proviso added towards the end of this Act, viz. that no putting in charge, or super, or answering of the farm rents, revenues or profits, &c. in four cases shall be within this Act, viz. 1. By force, colour or pretext of any Letters Patents of concealments. They were called Letters Patents of concealments, because either they had a clause before the habendum, *quæ quidem maneria nuper fuerunt à nobis concealata, subtrahata, vel injuste detenta*, or to the like effect; or else a Proviso after the habendum to the like effect. Letters Patents of concealment were granted in Queen Maries time; and the first that I find, were granted to Sir George Howard: and in all succeeding Acts of Parliament of confirmation of Letters Patents, Letters Patents of concealments are excepted.

2. Or defective title. By Letters Patents passed by the warrant of certaine Commissioners under the Great Seale for compositions of defective titles, pretending the same to be for the Kings benefit, and safety of the subject; in which Letters Patents no words of concealment, &c. are mentioned, but yet upon the matter, they were supposed to be concealed, &c. from the Crown.

3. Or of lands, tenements or hereditaments out of charge. This was a new device, to have a certificate that they were not in charge, and then to take a grant from the King, for a very small composition, &c. And these were but inventions and subtill devices to deceive the King, to rob him of his tenures, and to the infinite vexation and trouble of the subject: all which mischiefs are now remedied by this Act.

4. Or by force, colour or pretext of any Commission or other authority to finde out concealments, defective titles, or land, &c. out of charge. This was a necessary clause to be added, for of this kind there were infinite numbers.

Out of this first part all liberties and franchises be excepted.

¶ And that every person and persons, bodies politick and corporate, their heirs and successors, and all claiming from, by, or under them, or any of them, for and according to their severall estates and interests, which they have, or claim to have in the same respectively, shall hereafter quietly and freely have, hold and enjoy against his Majesty, his heirs and successors, &c.

The 2. Part.

This is the second part of the body of the Act: and as the first part is Negative and excludeth of the right and title of the King, so this part is Affirmative, and establishing the State of the Subject.

The mischief before this statute was in two sorts, viz. either when the King had any estate vested or continued in him; or where the King had but a bare right. For example; the Kings tenant seised of lands, &c. in fee is attainted of felony, and dieth, the King hath a reall estate in him: but if before the felony the Kings tenant were disseised, and after is attainted, and dieth, now hath the King but a bare right. In both these cases, & sic in similibus, the Subject is provided for by this Act, both by the first part, and by this also. For where in this part it is said, according to their and every of their severall estates and interests which they have or claim: If they have an estate, and the King but a bare right or title, then are they within these words [which they have;] and if the King hath a reall estate in him, then are they within these words [or claim:] so as the remedy is applied to both the mischiefs. Again, the words in this part are further, have held, or enjoyed: That is, where the Subject hath an estate, and the King but a bare right or title.

¶ **O**rtaken the rents, issues, revenues, or profits thereof.]

These words extend to all cases where the reall estate is in the King. Whereby is understood the actual taking of the rents, issues, revenues or profits by one that claims an interest in the land: for albeit the King may in law charge him as Bailif, yet without question, de facto, he did take the rents, issues, revenues and profits, and that sufficeth to answer the letter and meaning of this Act.

Moreover, the words of this part are, [against him, his heirs or successors.] So as admit in the case put before, the Kings tenant being disseised, as is aforesaid, before his attainder of felony, that that disseisor had been disseised, or had mortgaged the land before this statute, this Act in this case barreth the King of his right & title, & to that end worketh upon the State of the disseisor or Mortgagee: but yet the first Disseisor or the Mortgagee for the condition performed or broken may re-enter; for the words of this part be [against the King, his heirs and successors] so as the bar is only against them: and every Subject shall take benefit of this Act, for the Kings right and title is thereby utterly barred: and there is a saving hereafter in this Act to all persons, &c. other then the King &c. all such right, &c. as they ought to have had before this Act.

This part extendeth not to liberties and franchises.

Now followeth the third part of the Purview of this Act.

The 3. part.

And furthermore, that every person or persons, bodies politick and corporate, their heirs and successors, &c. shall quietly and freely have, hold, and enjoy all such Mannors, &c. as they now have, claim, and enjoy, &c. against all and every person and persons, their heirs and assigns having, claiming, or pretending to have any estate, right, title, interest, claim or demand whatsoever, &c. by reason or colour of any Letters Patents, or grants upon suggestion of Concealment, or wrongfull detaining, or not being in charge, or defective titles, or by, from, or under any Patentees, &c. of or for which Mannors, &c. no verdict, &c.

This part secures the Subject against the Subject, viz. against Patentees and Grantees of concealments, defective titles, or lands not in charge, and all claiming under them. A beneficiall Law both for the Church and Commonwealth, in respect of the multitude of Letters Patents and Grants of these natures and qualities, and many of them of large extents, and in generall words, and had passed through the hands of many indigent and needy persons, &c.

This part extendeth to Liberties and Franchises, which the former two parts did not.

The

The two first Provisions are plain, and in effect are included in the body of the Act. The second Provision was necessary to preserve tenures: the saving needeth no explanation. The third Provision is particular and evident. The fourth Provision, Provided also, and be it enacted, that where any fee-farm rent, &c. This was added for the preserving of the Kings fee farms and rents out of such Mannors, &c. which are established and made sure by this Act. For example, King E. 6. did grant the Mannor of D. which came to him by the Statute of Chantries, to I. S. and his heirs, reserving a fee farm, or any other rent; which grant for some imperfection was insufficient in law to pass the said Mannor, and yet is established and made sure by this Act. This Provision maketh good the fee farm or rent to the King, if he hath been answered the same by the greater part of sixty yeares last past.

The last Provision is particular and evident.

Of the benefit of this Act the poor do participate as well as the rich, for hereby (amongst other things) above an hundred Lay Hospitals having had Priests within them in those dates to pray and sing for soules, &c. (if need were) are established against all verations and pretences of concealments.

See an excellent Act made against these Harpyes or Helluones, that under obscure words, endeavoured surreptitiously in a Patent of concealment to have swallowed up the greatest part of the possessions of that ancient and famous Bishoprick of Norwich, which by the industry and prosecution of the then Attorney generall was overthrowen; and yet for more surety in a matter of so great weight, a Bill preferred in Parliament for establishing of the Bishoprick, which in the end passed as a law, anno 39 El. ubi supra.

See 39 El. ca. 22. which is worthy to be read. See this case at large, in the 4 part of the Institutes, cap. Consistory-Courts, &c.

Tristius haud illis monstrum, nec scivior ulla
Pestis & ira Dei stygiis sese extulit undis:
Virginei volucrum vultus, foedissima ventris
Proluvies, unctaque manus, & pallida semper
Ora fames.

CAP. LXXXVIII.

Against vexatious Relators, Informers, and Promooters upon penall Statutes.

THAT all offences hereafter to be committed against any Penall Statute, for which any common Informer or Promooter may lawfully ground any popular action, bill, plaint, suit or information, &c. shall be commenced, sued, prosecuted, &c. before the Justices of Assize, Justices of Nisi prius, &c. in the Counties where the offences were committed, and not elsewhere.

Statutum de 21 Jac. Reg. c. 4.

Whereas a good and profitable law was made in the 18 year of Queen El. for the ease and quiet of the Subject, and for the regulating of Informers upon penall Statutes, inflicting corporall punishments in certain cases upon them; and whereas two other good lawes were made for the same ends, the one in the 28 year, the other in the 31 year of the said late Queens reign, which yet stand and remain in force: yet these Acts did not meet with all the mischiefs and grievances offered to the Subject by the Relators, Informers and Promooters, (turbidum hominum genus) but these four mischiefs and grievances remained still.

18 El. ca. 5.

28 El. ca. 5.
31 El. ca. 10.

fitte, many penall laws obsolete, and in time grown apparently impossible, or inconvenient to be performed, remained as snares, whereupon the Relator, Informer or Promoter did vex and intangle the Subject: Such as were the Statutes made anno 37 E. 3. cap. 5. concerning the prices of Poultry, and 34 E. 3. ca. 20. concerning transportation of Corn, and 3 E. 4. cap. 2. concerning Corn not to be brought into the Realm, and 4 H. 7. ca. 9. concerning the prices of Wale and Caps, and 14 R. 2. cap. 7. concerning the passing of Wren out of the Realm, and 15 R. 2. cap. 8. concerning the carriage of Wren to Calice, and 4 H. 7. cap. 3. concerning making Battens of Asp, and 4 H. 7. ca. 8. concerning the prices of Bread-cloth, &c. and 11 H. 7. ca. 2. concerning Ragabonds, unlavishall Games, and Alehouses, &c. and one other Statute in the 19. year of H. 7. cap. 12. concerning those matters, and 11 H. 6. cap. 12. concerning Wax-chandlers and the price of Candles, and 34 H. 8. cap. 7. concerning the sale of Wines, and 28 H. 8. cap. 14. concerning the prices of Wines, and 27 H. 8. Stat. de Monasteriis, concerning keeping of house and households upon scites of Monasteries, &c. and 4 H. 7. cap. 19. concerning houses of husbandry and tillage, and 7 H. 8. ca. 1. concerning letting down of townes, and 27 H. 8. cap. 22. concerning decay of Houses and Inclosures, and 5 E. 6. ca. 5. for the maintenance of tillage, &c. and 5 E. 6. cap. 12. for maintenance and increase of Tillage, and 14 R. 2. cap. 4. 8 H. 6. ca. 13. and 3 E. 6. cap. 7. concerning the buying of Wool, woollen yarn, &c. and 33 H. 8. cap. 3. concerning the keeping of great hoxes, the Statute of Wiltchett. In the time of E. 1. concerning Harness and Armes, Arrie: super Chart. c. 20. concerning making of Rings, Crofles and Locks, and 37 E. 3. cap. 7. that makers of white vessell should not guild, and 2 H. 5. ca. 4. Stat. 2. that Goldsmiths should not take more then forty six shillings eight pence for a pound of Troy Silver guilt, 2 H. 6. ca. 14. that no Silver shall be bought for more then thirty shillings the pound of Troy, 2 H. 4. ca. 6. against the bringing in of Coin of Flanders, Scotland, & other Foreign Coin, 13 R. 2. ca. 8. and 4 H. 4. cap. 25. concerning the prices of Hay and Oats sold by Hostlers, and 4 & 5 Ph. & Mar. cap. 5. concerning the putting to sale of coloured cloth, and another part of the same Statute concerning the mystery of making, weaving, or rowing of woollen cloth, &c. and 18 El. ca. 16. for toleration of certain Clothiers to dwell out of townes corporate, and many other unnecessary Statutes unfit for this time, about the number of threescore, repealed by an Act made at this Parliament in the 21 year of the reign of King James, as by that Act appeareth: and many like Acts are not continued, as by the conference between that Act & other former Acts of continuance may appear. So as these snares that might have lien heavy upon the Subject, by this & other former Statutes either are repealed or not continued.

The second mischief was, that common Informers, and many times the Kings Attorney, brew all Informations for any offence in any place within the Realm of England against any penall law, to some of the Kings Courts at Westminster, to the intolerable charge, vexation and trouble of the Subject, and it was feared that Westminster Hall would labour of an Apoplexy by pouring up all suits into it, as the naturall body doth receive when the humours of the body are drawn up unto the head, which in the end (if it be not prevented) turneth to an Apoplexy.

The third mischief was, that in Informations, &c. the offence supposed to be against the penall law, and to be committed in one County, was at the pleasure of the Informer, &c. alleged in any County where he would, where neither party nor witness was known, against the right institution of the law, that the Jury (for their better notice) should come de vicinis of the place where the fact was committed.

The fourth mischief was, that in divers cases the party Defendant in Informations or Actions upon the Statute, was driven to plead specially, which was both chargeable and dangerous to him, if his plea were not both substanti- all and formall.

These three mischiefs last mentioned are expressly and absolutely provided for by

by this Act, which moved from the house of Commons. And so did the Act of continuing and revising of divers Statutes, and repeal of divers others.

21 Jac. cap. 28.

The first part of the Purview beginning thus, For remedy whereof be it enacted by the authority of this present Parliament, that all offences, &c.

The first part of the Act.

This clause consisteth upon Three parts. First, affirmative: and this is divided into two branches. 1. For the Informations, &c. It is enacted, that where a common Informer might before this Act have informed upon any penal statute before Justices of Assize, Justices of Nisi prius, or Justices of Gaol-delivery, Justices of Oier and Terminer, or Justices of Peace in their generall or quarter Sessions; there a common Informer may inform, &c. 2. Before what Judges: this Act appoints no new Judges, but such as former penall lawes appointed, viz. the Justices before mentioned, or any of them, according to the former Act.

The second part is restrictive, restraining any Information, &c. to be commenced, sued, &c. either by the Attorney General, or by any Officer, common Informer, or any other person whatsoever, in any of the Kings Courts at Westminister, So as the Kings Bench, Star-Chamber, Chancery, Common Pleas, Exchequer, or Exchequer Chamber, cannot receive or hold plea of any Information, &c. upon any penal statute, either by the Kings Attorney, any common Informer, or any other person whatsoever: but the matter shall be heard and determined before such Justices as are aforesaid in the proper County where the offence was committed.

The third part giveth the like Proces upon every popular Action, Bill, Plaint, Information or suit to be commenced or prosecuted by force of, or according to the purport of this Act, as in an Action of Trespass, Vi & armis, at the Common law: but upon no other popular Action, Bill, &c. which is not sued, &c. by force of this Act.

The second part of this Act doth meet with the second of the said three mischiefs, and standeth upon three branches.

The second part of the Act.

First, that in all Informations, &c. exhibited, &c. either for the King or any other, &c. the offence shall be layed and alledged, &c. in the said County where such offence was in truth committed, and not elsewhere.

The second branch is, that if the defendant pleadeth the generall issue, the plaintiffe or informer upon evidence to the Jury must prove two things: First, the offence laid in the information &c. Secondly, that the offence was committed in that County, otherwise the defendant shall be found not guilty.

The third branch is, that for more surety that the offence shall be alledged truly in the proper County where in truth it was committed, no Information, &c. shall be received, filed or entred of Record, untill the Informer or Relator hath first taken a corporall oath before some of the Judges of that Court, which consisteth of two parts: First, that the offence or offences laid in such information, &c. were not committed in any other County then where the same are alledged in the Information, &c. Secondly, that he believeth in his conscience that the offence was committed within a year before the Information or suit. And this Oath is to be entred of Record. And all this is to be done before the Information be received, filed, or entred of Record.

The third part of this Act meeteth with the last mischief: for by this part the defendant may plead the generall issue, and give any speciall matter in evidence to the Jury; which matter being pleaded, had been a good and sufficient matter in law to have discharged the defendant, &c.

The third part of the Act.

This is a very beneficial clause, and cleareth many questions at the Common law. And where it may be objected, that for want of sufficient Clerks the proceeding according to this Statute will be erroneous, and to be reversed by Writ of Error, so as it will deter Informers to inform, &c. and in effect lay asleep all penal lawes: To this it may be answered, First, that it shall be the fault of the Informer himselfe; for if he inform before Justices of Assize or Nisi prius, they

27 H. 8. f. 21, &c.

they have sufficient Clerks. Secondly, I perswade my self that the other Justices will in discharge of their conscience and duty, provide sufficient Clerks. And lastly, that few or no errors shall fall out in respect of the general pleading.

The last clause of this Act is this, Provided alwaies that this Act or any thing therein contained, shall not extend to any information, &c.

By this clause this Act extends not to penall statutes of these sorts; concerning, 1. Popish Recusants for not coming to Church, 2. Maintenance, Champerty, or buying of titles, 3. The subsidy of Tonnage and Poundage, Wool, &c. 4. The defrauding the King of any Custome, Tonnage, Poundage, Subsidy, Impost, or Prilage, 5. Transportation of Gold, Silver, Powder, Shot, Punition of all sorts, Wool, Woolsels, or Leather: but that every of these offences may be layed or alledged to be in any County at the pleasure of any Informer. But yet the Informer cannot inform, &c. for any of these offences in any of the Courts at Westminster, but before the Justices appointed by this Act: for this clause extendeth onely for the laying or alledging of any of these offences in any County that he will.

Mia 29 & 30 El.
Coram Rege.

18 Eliz. cap. 5.
Vi. lib. 6. fo. 19. b.
Gregories case.

Inter Widdestone & Clark Paioz of Pottingham, the case was this: Widdestone being arrested in Pottingham by Precept in the nature of a Capias, he was imprisoned in the custody of the Paioz, being keeper of the Gaol within the same town, and before the return of the Precept Widdestone offered to the Paioz sufficient surety to appear, &c. and he refused to accept the same: whereupon Widdestone brought his Action by bill upon the statute of 23 H. 6. cap. 10. whereunto the Defendant pleaded the generall issue; and it is found by verdict against the Defendant. In arrest of judgement it was shewed, that by the said statute of 18 Eliz. cap. 5. it is provided, that none shall be admitted or received to pursue against any person upon any penall statute, but by way of information or originall action, and not otherwise: in respect of the said negative words it was adjudged, that, for that the said action was brought by Bill, and not by Information or Originall, Quod querens nihil capiat per billam. &c. the rest of the statute of 18 Eliz. concerning Informers.

You have heard of four viperous Vermin, which endeavoured to have eaten out the sides of the Church and Common-wealth: Whereof, viz. the Monopolist, the Dispenser with publick and profitable penall lawes for a private, and the Concealers, are blown up and exterminated, and the fourth, viz. the Vexatious Informer, well regulated and restrained, who under the reverend Mantle of Law and Justice, instituted for protection of the innocent and the good of the Common-wealth, did bere and depauperize the Subject, and commonly the poorer sort, for malice or private ends, and never for love of Justice. And these are worthily placed among the Pleas of the Crown, because it is for the honor and benefit of the Crown, when the Church and Common-wealth do flourish in peace and plenty: for the King can never be poor when his Subjects are rich.

Hil. 36 Eliz.
Rot. 135. Int. plac.
Regis, coram
Rege, Hamonds
case.

Trin. 31 Eliz. coram
Rege, Strettons
case.

See hereafter cap.
105. of Pardons.
7 H. 6. fo. 4.
5 E. 4. 3.
2 R. 3. fo. 12.
1 H. 7. 3.

George Hamond informed upon a penall statute concerning shipping of Cloth in the name of another, Qui tam, &c. against Edw. Griffich Defendant. Hamond the Informer dyed, and upon motion made by the Attorneys Generall, it was the opinion of the whole Court, that he the Attorneys Generall might proceed for the Queens Society after the death of the Informer.

Between Stretton, Qui tam, &c. and Taylor Defendant, that after a popular Action commenced, although the Attorneys Generall will enter an *Uterius non vult prosequi*; or if the Defendant plead a special plea, although the use be, that the Attorneys (to the end that there may be no juggling or Cobin between the Informer and the Defendant) reply only; notwithstanding, if the Attorneys Generall will not reply, the Informer may proceed and prosecute for his part: for the Informer by his suit commenced, hath made of a popular Action his private, which the King cannot for the part of the Informer pardon or release. And notwithstanding in all these cases before any Action or Information commenced by the Informer, but the suit remaining popular, wherein the King only, and no Subject

Subject hath any interest, the King may pardon and release the same: for after that pardon, no Informer can informe tam pro Domino Rege quam pro seipso, according to the Statute, &c. and for himself onely in a popular Action he cannot informe.

CAP. LXXXIX.

Of Forestalling, Ingrossing, &c.

Foristel, ^a Faristel, ^b Foristellum, & Foristellarius, derived of two Saxon words, viz. far or fare (via or iter) unde fare for a passage and farewell, to goe or proceed well; we have turned far to for; and stall, which we retaine still, and signifyeth interceptionem, or ^c impedimentum transitus, hinderance or interception. And the offender is called Forstellarius. See of this offender in the ancient Statute: ^d Nullus Forstellarius in villa patiatur morari, qui pauperum sit depressor manifeste, & totius Communitatis, & patrie publicus inimicus, qui bladum, pisces, allec, vel res quascunque venales per terram vel per aquam venientes, quandoque per terram, quandoque per aquam obviando praeteris festinat, lucrum faciens vitiosum, pauperes opprimens, ditiores decipiens, qui sic minus iuste illo qui eos apportaverit multo magis vendere machinatur; qui mercatores extraneos venalibus venientibus circumvenit, offerens se venditioni rerum suarum, & suggerit, quod bona sua carius vendere poterunt quam vendere proponebant; & sic arte, vel ingenio, villam seducit & patriam. Primo convictus graviter amercietur, secundo subeat iudicium pillorie, tertio incarceration & redimatur, quarto abjuret villam. Et hoc iudicium fiet de Forstellariis universis, & similiter de his qui ^e consilium aut auxilium eidem praestiterint vel favorem, &c. And his description see in a latter Act. See before in the Chapter of Monopolists.

Ingrossator or Engrossator, of the English & French word grosse, that is, great or whole, unde Perchat grossier, a Perchat that selleth by great or whole sale. We remember not that we have read of this word [in grosse] in any Act of Parliament, Book Case, or Record, but ^f rarely, before the said Act of 5 E. 6. And there is an Ingrosser by the Common lawes, who is hereafter described. And there is an Ingrosser by Act of Parliament, and he is described by the Statute of 5 E. 6. And by that Act a ^g Regrator is also described, who is a kind of Ingrosser. Regrator is derived of the French word Regratement, for Huckstery. But in ancient time both the Ingrosser and Regrator were comprehended under Forstaller.

It was ^h resolved by the Justices and Barons of the Exchequer upon conference betwixt them, that Salt is a victuall, and the buying and selling thereof was within the Statute of 5 E. 6. for it was not only of necessity of it self for the food and health of man, but it seasoneth and maketh wholesome Beefe, Pork, &c. Butter, Cheese, &c. and other Viands. And Peryam Justice said, ⁱ Hil. 26 El. in Cui banco, that so it had been lately adjudged.

^j Mich. 6 Jac. in Scaccario, in an information by Baron against Boy, upon the Statute of 5 E. 6. cap. 14. of Ingrossers for buying and selling of Apples, the defendant pleaded not guilty, and was found guilty. But the Barons gave judgment against the Informer, and caused an Entry to be made in the Wargent of the Record, that the judgment was given upon matter apparent to them, that Apples were not within the said Act, for that the Act is to be intended of victualls necessary for the food of man; the words of the Act being [Corne, Graine, Butrer, Cheese, Fish, or other dead victuall] which is as much as to say, of other dead victuall of like quality, id est, of like necessary and common use. And

therefore

See the first part of the Institutes, Sect. 240.

Domesday.

^a Chent. Dover.

ter.

^b Worcester.

Scitropscir

Civitas.

^c Fleta lib. 1.

ca. 42. forestall.

& lib. 2. cap. 11.

Britton fo. 33. a.

77. a.

^d Vi. Ver. M. C.

part. 2. 24. b.

34 E. 1. de Pillor.

Braciatoribus

& aliis victuel-

lariis, & de Fore-

stellariis, hic in-

fra.

^e 51 H. 3. Rast.

weights and mea-

sures, 4.

25 E. 3. c. 3. stat. 3.

27 E. 3. cap. 11.

stat. stap.

28 E. 3. cap. 13.

5 E. 6. cap. 14.

5 Eliz. cap. 12.

13 Eliz. cap. 25.

^f For the word

[Ingrossor,] see

27 E. 3. c. 5. stat. 1.

37 E. 3. cap. 5.

^g For this word

[Regrator] see

51 H. 3. weights

and meaures.

4. Rastall.

14 R. 2. ca. 4.

8 H. 6. cap. 5.

Regrators or

Choppers, and

in some countries

called Jobbers.

^h M. 44 & 45 El.

at Serjeants Inne

in Fleetstreet.

ⁱ Hil. 26 Eliz.

judgment cite

per Peryam Justice.

^j M. 6 Jac. in Scac-

Int. Baron & Boy

therefore Apples being rather of pleasure then necessity are not within the said statute, no more then Plums, Cherries, or other fruit; and no information hath ever been exhibited for ingrossing of Apples, Plums, Cherries, or other fruit: but the statute of 2 E. 6. cap. 15. doth forbid conspiracy of Costermongers and Fruterers, and maketh such conspiracy unlawfull. And the said judgment of the Barons was affirmed in a writ of Errour in the Erchequer Chamber.

P. 18 E. 2. Coram Rege, Rot. 76. South.

Mic. 39 & 40 El. Resolution de routs les Justices. * Dardanarius. An Ingrosser by the common law described.

—Lucrumq; acquirit eundo, Nivis ut exiguus crescit eundo globus.

3 E. 2. Aſſion sur lestat. F. N. B. 250. l.

43 Aſſ. p. 38. Tit. Aſſ. 354.

Nota, the abatement by undue means of the Price of our native commodities, is punishable by fine and ransom. See 23 E. 3. cap. 6. 13 R. 2. cap. 8. Inter leges Ethelstani, cap. 12.

Inter leges Will. Conquest. fo. 125.

Venditio Brasei non est venditio Victualium, nec debet puniri sicut venditio panis, vini & cervisie, & hujusmodi, contra formam statuti. But the Act of 5 E. 6. hath made cozne, graine, &c. to be victuall within that Act. Vide Vet. N. B. 2. part 23. b. Stat. de Pistor, Braceator, & aliis victelariis, 34 E. 1.

It was upon conference and mature deliberation resolved by all the Justices, that any Merchant, Subject or Stranger, bringing victuals or merchandise into this Realme, may sell them in grosse; but that vendee cannot sell them again in grosse, for then he is an * Ingrosser according to the nature of the word, for that he buyes in grosse, & sells in grosse, & may be indicted thereof at the Common law, as for an offence that is malum in se. 2. That no Merchant or any other may buy within the Realme any victuall or other merchandise in grosse, and sell the same in grosse againe, for then he is an Ingrosser, and punishable, ut supra: For by this meanes the prices of victuals and other merchandise shall be inhaunced, to the grievance of the Subject; for the more hands they passe through, the dearer they grow, for every one thirsteth after gaine, viciosum sitium lucrum. And if these things were lawfull a rich man might ingrosse into his hands all a commodity, & sell the same at what price he will. And every practice or device by act, conspiracy, words or newes, to inhaunce the price of victuals or other merchandise, was punishable by law; and they relied much upon the statute aforesaid, Nullus forstellarius, &c. which see before in this Chapter: and that the name of an Ingrosser in the reigne of H. 3. and E. 1. was not known, but comprehended within this word [forstellarius] lucrum sciens viciosum; and ingrossing is a branch of forstellalling. And for that forstellarius was pauperum depressor, & totius Communis & patrie publicus inimicus, he was punishable by the Common law. They had also in consideration the Book in 43 Aſſ. where it was presented, that a Lombard did procure to promote and inhaunce the price of merchandise, and shewed how: the Lombard demanded judgment of the presentment for two causes. 1. That it did not sound in forstellalling. 2. That of his endeavour or attempt by words, no evill was put in ure, that is, no price was inhaunced, & non allocatur, and thereupon he pleaded not guilty. Whereby it appeareth, that the attempt by words to inhaunce the price of merchandise was punishable by law, and did sound in forstellallment: and it appeareth by the Book that the punishment was by fine and ransom. And in that case Kniver reported, that certaine people (and named their names) came to Coteshold in Herefordshire, and said in deceit of the people, that there were such wars beyond the seas, as no Wool could passe or be carried beyond sea, whereby the price of wools was abated: and upon presentment hereof made, they appeared; and upon their confession they were put to fine and ransom. See the statute of 25 H. 8. cap. 2. whereby the Lords of the Councell, Justices, &c. or any seven of them, &c. have power to set prices on victuals, and the same to be proclaimed under the Great Seale.

For preventing of all ingrossing and forstellalling, it was the ancient law before the Conquest, Decrevimus porro, ne quis extra oppidum quicquam 20 Denariis carius estimatum emat, verum intra portum presente oppidi prefecto, aliove viro fideli, aut ipso denique proposito regio, in celebri plebis concursu, & hominum oculis quisque mercator.

Interdicimus etiam ut nulli pecudes emantur nisi infra civitates, & hoc ante tres fideles testes, nec alia necessaria sine fideiussore & warranto, &c. Item nullum mercatum vel feria sit, nec fieri permittatur, nisi in civitatibus regni nostri & in burgis, &c.

Commissio facta fuit Roberto Hadham ad vendend' blada & alia bona diversarum Abbatiarum alienigenarum; qui venit & cognovit quod vendidit blada Prioris de Tickford in garbis in duabus * tassis exilient pro 10 li. quaz venditio facta fuit contra legem & consuetudinem regni Angliæ, vendend' in garbis, priusquam triturat fuerunt, quod fieri debuisset per mensuram post eorum * triturationem: Ideo committitur prisonæ, & adjudicatur, quod ab omni officio Domini Regis amoveatur, & quodd finem faciat cum Domino Rege.

Observe well this judgement, that it is against the Common law of England to sell corn in sheafs before it is threshed and measured: and the reason thereof seemeth to be, for that by such sale the Market in effect is forestalled.

Hil. 23 E. 3. coram Rege, Rot. 13 Buck. Hadhams case.
* Of the French word *Tasser*, to heap in Goves or stacks.
See 5 E. 6. ca. 14. He is an Ingrosser that buyes (other then by grant or lease of land or tithes) any corn growing in the fields, &c.

CAP. XC.

Against Roberdsmen.

IT is an English Proverb, That many men talk of Robin Hood, that never shot in his Bow: and because the Statutes and Records hereafter mentioned cannot well be understood, unless it be known what this Robin Hood was that hath raised a name to these kind of men called Roberdsmen, his followers, we will describe him.

This Robert Hood lived in the reign of King R. 1. in the borders of England and Scotland, in Woods and desarts, by robbery, burning of houses, felony, waste and spoile, and principally by and with Vagabonds, idle wanderers, night-walkers and draw-latches: so as this notable thief gave not only a name to these kind of men, but there is a Bay called Robin Woods Bay, in the River of in Yorkshire. And albeit he lived in Yorkshire, yet men of his quality took their denomination of him, and were called Roberdsmen, throughout all England.

He was, saith Maior Scotus, prædonum princeps, & prælo mitissimus.

Against these men was the statute of Winchester made in 13 E. 1. for preventing of robbery, murders, burning of houses, &c. Also the statute of 5 E. 3. which reciteth the statute of Winchester, and that there had been divers manslaughter, felonies and robberies done in times past by people that be called Roberdsmen, Vagabonds, and Draw-latches; and remedy is provided by that Act for the arresting of them.

13 E. 1. Statute de Winchest. ca. 1. 4.
5 H. 7. fo. 5.
5 E. 3. cap. 14.

At the Parliament holden 50 E. 3. it was petitioned to the King that Ribauds and sturdy Beggars might be banished out of every town. The answer of the King in Parliament was touching Ribauds, The statute of Winchester and the declaration of the same, with other * statutes of Roberdsmen; and for such as make themselves Gentlemen, and men of Armes and Archers, if they cannot so prove their selves, let them be driven to their occupation or service, or to the place from whence they came.

Rot. Parl. 50 E. 3. nu. 61.

* 5 E. 3. cap. 14.
2 H. 5. cap. 9.
8 H. 6. cap. 14.
Vid. 39 Eliz. ca. 4.

It is provided by the statute of 7 R. 2. that the statutes made in the time of King Edward, Grandfather of the King, of Roberdsmen and Draw-latches, be firmly holden and kept, and further provision against Vagabonds wandering from place to place. See a law made in the sixth Parliament of Queen Mary, Anno Dom. 1555, in Scotland against Robert Hood, Little John, &c.

7 R. 2. cap. 5.
Vid. 39 Eliz. ca. 4.

CAP. XCI.

Of Bankrupts.

Vide in the fourth part of the Institutes, Cap. The Court of the Commissioners of Bankrupts.

CAP. XCII.

Of Recusants.

1 Eliz. cap. 2.
23 Eliz. cap. 1.
28 Eliz. cap. 6.
35 Eliz. cap. 1, 2.
3 Jac. cap. 4.
7 Jac. cap. 6.
Lib. 10. 54. the
Chancelour of
Oxfords case.
Lib. 11. 56, 57,
&c. Dr. Fosters
case.
Lib. 5. fo. 1.
Caudries case.
Dier 3 Eliz. fo.
203.

First, the Acts of Parliament that are made against them are 1 Eliz. cap. 2.
23 Eliz. cap. 1. 28 Eliz. cap. 6. 35 Eliz. cap. 1 & 2. 3 Jac. cap. 4. 7 Jac. ca. 6.
These Acts of Parliament are interpreted and expounded by divers judge-
ments and resolutions heretofore given, Lib. 10. fo. 54. &c. Le case de Chance-
lour, &c. de Oxford, an exposition of the statute of 3 Jac. ca. 4. et Lib. 11. fo. 56,
57, &c. Doctor Fosters case, an exposition of all the said statutes. See Lib. 5.
fo. 1, &c. Caudries case. See Dier 3 Eliz. fo. 203. an exposition of the said Act
of 1 El. concerning hearing of Paſſe.

CAP. XCIII.

Of Newes, Rumours, &c.

Tacitus.

Integ. Alveredi
cap. 28.

See the Second part of the Institutes, W. 1. cap. 33. Newes. See also in the
fourth part of the Institutes, cap. Chancery, in the Articles against Cardinall
Woolsey, Artic. 32. Convicia, si irascaris, tua divalgas; spreta exolescunt: If you
seek to revenge slanders, you publish them as your own; if you despise them,
they vanish.

The law before the Conquest was, that the author and spreader of false ru-
mours amongst the people had his tongue cut out, if he redeemed it not by the
estimation of his head.

CAP. XCIV.

Of Weights and Measures.

See the second part of the Institutes, W. 1. cap. 4. and the exposition upon
the same.

CAP.

CAP. XCV.

Of Apparell.

Divers Acts of Parliament have been made against the exccesse of Apparell in the reign of E. 3. As 11 E. 3. cap. 2 & 4. 37 E. 3. ca. 8, 9, 10, 11, 12, 13, 14. 38 E. 3. cap. 2. in the reign of E. 4. 3 E. 4. cap. 5. 22 E. 4. cap. 1. in the reign of H. 5. 1 H. 5. cap. 14. 6 H. 5. ca. 1. 7 H. 5. cap. 7. 24 H. 5. cap. 13. 33 H. 5. cap. 5. 37 H. 5. ca. 7. 1 & 2 Ph. & Mar. ca. 2, 4 & 5 Ph. & Mar. c. 2. 5 El. ca. 6. 8 El. ca. 11. 13 El. ca. 19. Some of them fighting with and cuffing one another, some of them expired. But soasmuch as those that stood in force were obsolete, & remained but as shars to catch oz ver men at the pleasure of the Præmoter; at the Parliament holden Anno 1 Ja. all Acts of Parliament before the time made concerning Apparell are repealed and abrogated, and since that time no Act hath been made concerning Apparell, and so standeth the law at this day. These costly things there are that do much impoverish the Subjects of England, viz. Costly Apparell, costly diet, and costly building. The best mean to repress costly Apparell and the exccesse thereof, is by example; for if it would please great men to shew good example, and to weare Apparell of the cloth and other commodities brought within the Realm, it would best cure this vain and consuming ill, which is a branch of probigality, and herewith few wise men are taken. If you will look into the Parliament Roll of 2 H. 6. you shall see what plain and frugall Apparell that renowned King H. 5. after he was King did weare, his gown of lesse value then 40 s.

Magna corporis cura, magna animi incuria.

Non induetur mulier veste virili, nec vir uterur veste forminea: abominabilis apud Deum qui facit hoc.

1 Jac. R. ca. 25.

Exccesse of Apparell is best cured exemplo & exemplo.

Rot. Parl. 2 H. 6. nu. 30.

Deut. 22. 5.

D d 2 CAP.

CAP. XCVI.

Of Diet.

^a Rot. Claus.
⁹ E. 2. m. 26. in
Dorſt. intitled
*Ordinatio ſuper
menſuratione ſer-
culorum.*

^b 2 E. 6. cap. 19.

⁵ E. 6. ca. 3.

⁵ El. ca. 5.

²⁷ El. ca. 11.

³⁵ El. ca. 7.

³ Lent 2 Saxon.

Quinreſme.

Quadrageſima.

^c Hereof ſee the

4. part of the In-
ſtitutes, cap. The
Court of Audi-
ence, &c. and Fa-
culties.

^{*} Vide Britton
cap. 53. and other
books make men-
tion of theſe.

^d Lucc. 21. v. 34.

Rom. ca. 13. v. 13.

Eccleſiaſticus

ca. 37. v. 30, 31.

^e Eccleſiaſticus

31. 20.

^f Cicero.

Horace 2 Ser. 2.

^g From whence
exceſſe of drin-
king in England
came.

^h From whence
troops of Idle
ſervingsmen came
into England.

ⁱ 4 Jacobi c. 5.

See 1 Ja. ca. 9.

⁷ Ja. ca. 10.

²¹ Ja. c. 7. an ex-
cellent law.

*Una ſalus ſanis
nullam potare ſa-
lutem.*

There was an Ordinance made by King E. 2. by advice of his Councell againſt the exceſſe of Diet, but becauſe it had not the ſtrength of an Act of Parliament, it wrought no effect.

It is provided by ſtatutes made in the reign of E. 6. and Queen Elizabeth, that no fleſh ſhall be eaten on Fiſh-daies, viz. Friday, Saturday, Embring daies and Vigils, and the time of * Lent; and ſo licences to eat fleſh on Fiſh-daies, &c. ſee the Preamble of the ſtatute of 2 E. 6. ca. 19.

Embring daies, ſo called becauſe in former times when they faſted they put Aſhes or Embers on their heads, Job 2. 12. Jer. 6. 26. 2 Sam. 13. 19. And as the natural conſervation of the fleſh of the body is to duſt, ſo the ſins of the ſoul (unrepented) are turned to fire, and this was shadowed under Embers that ever keep fire.

Theſe Embring daies are the week next before Quadrageſima, ſo called, ſo that it is the fortieth day before Eaſter, and is the firſt Sunday in Lent. So Quinquageſima the Sunday fifty daies before Eaſter, Sexageſima ſixty daies before Eaſter, and Septuageſima ſeventy daies before Eaſter.

Before theſe late Acts the eating of Fleſh on Fridaies was puniſhable in the Eccleſiaſtical Court, as yet it is, the jurisdiction being ſaved by the ſaid Acts.

But there is no Act of Parliament againſt exceſſe of diet, ſo that it is known to be ſo hurtful ſo man's body, and ſo obſcureth the faculties of the minde, as the underſtanding, memory, &c. as to men, ſpecially to Chriſtian men, there needed no law at all to be made, ever being mindful of that Cateat, ^d Attendite autem vobis, ne forte graventur corda veſtra in crapula & ebrietate, &c.

Vigilia, & cholera, & tortura viro infrunito; Somnus ſanctis homini parco, dormier ſque in mane, & anima illius cum ipſo deſtabitur. The Poſſall hea- then men by the Light of nature agree hereunto. ^f Tantum cibi & potus adhibendum eſt, ut reficiantur vires, non opprimantur.

Accipe tu victus tenuis quæ quantaque ſecum
Afferat: imprimis valeas bene. Nam varix res
Ut noceant homini credas, memor illius eſcæ
Quæ ſimplex olim tibi ſederit: At ſimul aſſis
Miſcueris elixa, ſimul conchyliis turdis;
Dulcia ſe in bilem vertent, ſtomachoque tumultum
Lenta feret pituita: vides, ut pallidus omnis
Cœna deſurgat dubia?

Ex plenitudine generantur morbi, qui ſuperant medicorum artem.

King Edgar permitting many of the Danes to inhabit here (^g who firſt brought into this Realm exceſſive drinking) was in the end conſtrained to make a law againſt this exceſſe (which never cometh alone) driving certain nails into the ſides of their cups, as limits and bounds, which no man upon great pain ſhould be ſo hardy as to tranſgreſſe.

William of Palmeſbury, comparing Engliſhmen and Poſmans together, ſaith, that in his time the Engliſh manner was to ſit bibbing whole hours after dinner, ^h and that the Poſman ſaſhion was to walk the ſtreets with great troops, with idle and looſe ſerving-men following them; both which were cauſes of many diſorders and outrages.

ⁱ If the exceſſe of drinking extend to the loathſome and odious vice of drunkenneſſe, it is puniſhable by Act of Parliament. And to ſay the truth, the ancient Britans were free from this crime.

Ecce

*Ecce Britannorum mos est laudabilis iste,
Ut bibat arbitrio pocula quisque suo.*

And the laws against drunkenness are very new.

Nothing is here said against that great Peacemaker and branch of liberality, orderly Hospitality, but against the dainty and disorderly excess of meats and drinks, which is a species of prodigality: for it is provided by Act of Parliament that the grace of Hospitality shall not be withholding from the needy.

W. 1. 3 E. 1. ca. 1.

See the Statute of 37 E. 3. ca. 8. against excessive apparell and diet: but it was repealed in the next Parliament, 38 E. 3. ca. 2.

C A P. XCVII.

Of Buildings.

WE have not read of any Act of Parliament now in force made against the excess of building, or touching the order or manner of building; but it is a wasting evil, whereunto some wise men are subject. But the Common law doth prohibit any subject to build any Castle or house of strength imbatteled, &c. without the Kings licence, for the danger that might ensue. Also the Common law prohibiteth the building of any edifice to a common nuisance, or to the nuisance of any man in his house, as the stopping up of his light, or to any other prejudice or annoyance of him. *Edificare in tuo proprio solo non licet, quod alteri noceat.*

^a In Deuteronomy it is said, *Cum edificaveris domum novam, facies murum recti per circuitum, ne effundatur sanguis in domo tua, & sis reus, labente alio, & in princeps ruente.*

^a I like well the Counsell to a Nobleman, whosoever gave it, *Si vis (air ille) edificare domum, inducat te necessitas, non voluptas; cupiditas edificandi edificando non tollitur; nimia & inordinata cupiditas edificandi expectat edificii venditionem: Turris completa & arca evacuata faciunt tardè hominem sapientem.*

*Edificare domos multas, & pascere multos,
Est ad pauperiem semita laxa nimis.*

*To build many houses, and many to feed,
To poverty that way both readily lead.*

Of these three it hath been truly said, *Vellum, Conviviorum, & Edificiorum luxuria contra civitatis sunt indicia, & species prodigalitat.*

But by the Common law, and general custome of the Realm, it was lawful for Bishops, Earls, and Barons to build Churches or Chappels within their Sees: and hereof King John informed Pope Innocentius the third (naming only, honoris causa, the Bishops and Baronage of England, albeit this liberty extended to all) with request that this liberty to the Baronage might be confirmed. To these Letters the Pope made this answer, *Quod enim de consuetudine regni Anglorum procedere regia Serenitas per suas literas intimavit, ut liceat tam Episcopis, quam Comitibus & Baronibus Ecclesias in feudo suo fundare; laicis quidem principibus id licere nullatenus denegamus, dummodo Dioecani Episcopi eis suffragetur assensus, & per novam structuram veterum Ecclesiarum justitia non laedatur.* Whereas the Baronage had absolute liberty before, now the Pope addeth the consent of the Bishop: but that addition bound not, seeing it was against the liberty of the Baronage warranted by the Common law: and we would not have rehearsed this Epistle, but that it is a proof what the general custome of the Realm was concerning the building of Churches

See the 1. part of the Institutes, Sect. 1. fo. 5. a. Ver. Mag. Chart. 1. part fo. 162. cap. Eschaetry, &c. 14 H. 6. nu. 7. licence to the D. of Glouc. to imbatel Greenwich. 4 Li. 9. f. 54. & 58. Lib. 5. fo. 101, &c. 6 Deut. 22. 8. c Battlements. This was for safety only. d Bernhard. consilium.

Euripides translated by Sir Th. Moor.

Vide the like in the Regist. 36. b. Prohib. de decimis separatis, In Epist. decret. Innocent. 3. l. 10. pag. 228.

Tr. 20 E. 1. Rot. 13. in banco, Rich. de Turnys case, Eborum.

ches by the Baronage of England. And albeit they might build Churches without the Kings licence, yet could they not erect a spirituall polittick body to continue in succession and capable of indowment without the Kings licence: but by the Common law before the statutes of Mortmain, they might have indowed this spirituall body once incorporated, perpetuis futuris temporibus, without any licence from the King or any other.

* Lib. 10. fo. 27.
Le case de Suttons Hospital.

See the statute of 39 El. cap. 4. whereby Authority is given to Justices of Peace to build and erect houses of Correction, &c.

a 39 El. ca. 5.
3 Car. ca. 1.

b *Tumba, tumulus, sepulchrum.*
c 9 E. 4. 14. the *Lx. Wiches* case, wife of Sir Hugh Wiche.

* Mich. 10 Ja. in *Communi banco* Int. Corven & Pym.

Barth. *Cassaneus* fo. 13. *Conclus.* 29. *Alio datur, siquis anima in aliquo loco posita delevit, seu abstrahit, &c.*

d 8 H. 7. 12. a per *Hussy* accord. *Palsch.* 10 Jac. in *curia Cam. Strelatz* Inter *Hussy* Plaintiff, & *Kath. Layton* & al' Defendants issint *resolv* per le Court.

e 8 H. 7. 12. a. acc. 12 H. 7. 12. per *Hussy.*

And as the law is in cases of Devotion and Religion, so it is in cases of Charity: Any man may erect and build a house for an Hospital, School, or King-house, or house of Correction or the like, without any licence, for that is but a preparation, and may be done as owner of the soil; but by the Common law could not incorporate any of them without licence, but now he may, and indow them with lands in certain cases, by the statutes of 39 Eliz. cap. 5. and 3 Car. c. 1. as in the Second part of the Institutes in the exposition of those statutes it appeareth.

Concerning the building or erecting of Tombs, Sepulchers or Monuments for the deceased, in Church, Chancell, Common Chappell, or Churchyard, in convenient manner it is lawful, for it is the last work of charity that can be done for the deceased, who whiles he lived was a lively Temple of the holy Ghost, with a reverend regard and Christian hope of a joyful resurrection. And the defacing of them is punishable by the Common law, as it appeareth in the book of 9 E. 4. 14. And so was it agreed by the whole Court, Mich. 16 Ja. in the Common plea between Corven and Pym. And for the defacing thereof, they that build or erect the same shall have the action during their lives, (as the Lady Wiche had in the case of 9 E. 4.) and after their deceases, the heir of the deceased shall have the action. But the building or erecting of the Sepulcher, Tomb, or other monument ought not to be to the hindrance of the celebration of divine service. And in that case of Corven it was resolved, that albeit the freehold of the Church be in the Parson, yet if a Lord of a Mannor or any other that hath an house within the town or parish, & that he and all those whose estate he hath in the mansion-house of the mannor, or other house, hath had a seat in an Isle of the Church for him and his family only, and have repaired it at his proper charges, it shall be intended that some of his Ancestors, or of the parties whose estate he hath, did build and erect that Isle for him and his family only; and therefore if the Ordinary endeavour to remove him, or place any other there, he may have a Prohibition. It was further resolved, that if any man hath a house in a town or parish, and that he and those whose estate he hath in the house, have had time out of minde a certain Pew or seat in the Church maintained by him and them, the Ordinary cannot remove him, (for prescription maketh certainty, the mother of quietnesse) and if he do, a prohibition lyeth against him. But where there is no prescription, there the Ordinary that hath the cure and charge of souls, may, for avoiding of contention in the Church or Chappell, and the more quiet and better service of God, and placing of men according to their qualities and degrees, take order for the placing of the parishioners in the Church or Chappell publick, which is dedicate and consecrate to the service of God.

Nota, Funeral expences according to the degree and quality of the deceased, are to be allowed of the goods of the deceased, before any debt or duty whatsoever, for that is *opus pium* or *charitativum*.

Amongst the people of Almighty God, as it appeareth in the Holy History, Sepulture was ever had in great reverence, not only of Kings, but of other men; as (amongst many others) god old Barzillai, when he had excused himself for not going with the King to Jerusalem, he concluded, *Obsecro ut reverrar servus tuus, & moriar in civitate mea, & sepeliar juxta Sepulchrum patris mei & matris meae, &c.*

And also the mozell Heathens had building and erecting of Sepulchers or Monuments in great account; as it doth appear by the Seven wonders of the world, which for memory may be expressed in these few verses.

1. Pyramides

2 Sam. 19. 37.

1. Pyramides Memphis, 2. Babylonis mœnia cellæ;
 3. Templum ingens Ephesi, virgo Diana; tuum;
 4. Mausoli Cariz monumentum, 5. Raraque Pharo
 - Turris, 6. Olympiaci splendida imago Jovis,
 7. Denique apud Rhodios splendentis statua Phœbi:
- Hæc septem mundus mira, viator, habet.

Besides the religious and Christian regard abovesaid, these monuments do serve for four good uses and ends. First, for evidence and proof of descents and pedigrees. Secondly, what time he that is there buried deceased. Thirdly, for example, to follow the good, or to eschew the evil. Fourthly, to put the living in mind of their end, for all the sons of Adam must die. Statutum est hominibus semel mori.

Monumentum servat alicujus rei memoriam aliter interituram, eamque nobis representat: and therefore a Monument is called a Memorial.

Monumentum dicitur à monendo; quicquid enim nos monet est monumentum, ut sepulchrum, quod nos sumus mortales.

Cum tumulum cernis, cum tu mortalia spernis:

Esto memor mortis, sisque ad cœlestia fortis.

It is to be observed, that in every Sepulcher that hath a monument, two things are to be considered, viz. the monument, and the sepulture or burial of the dead.

* The burial of the Cadaver (that is, caro data vermibus) is nullius in bonis, and belongs to Ecclesiastical cognisance; but as to the monument, action is given (as hath been said) at the Common law for defacing thereof.

In the year of our Lord 1586. and in the 18 year of the reign of that glorious Queen Elizabeth, was the old gate called Ludgate in the City of London (as Stow saith) taken down to be new builded: There was found colwched within the old wall thereof a stone, wherein was graven in the Hebrew tongue and Characters * an Epitaph, signifying in English, This is the Tomb of Rabbi Moses son of the illustrious Rabbi Isaac: which certainly was before the 13 year of the reign of H. 2. Anno Domini 1177. for before that time all the Jews in England were buried within the City of London, and in that year, saith Hoveden, Dominus rex pater dedit licentiam Judæis terræ suæ habendi cœmeterium in qualibet civitate Angliæ, extra muros civitatum, ubi possunt rationabiliter & in competenti loco emere, ad sepeliend' mortuos suos: prius enim omnes Judæi mortui Londoniâ ferebantur sepeliendi.

And albeit Churches or Chappels may be built by any of the Kings subjects (as hath been said) without licence, yet before the law take knowledge of them to be Churches or Chappels, the Bishop is to consecrate or dedicate the same: and this is the reason that a Church or not a Church, a Chappell or not a Chappell, shall be tried, and certified by the Bishop.

See for this dedication or consecration the 43 chapter of Ezechiel, the 23 chapter of Genesis, the 90 Psalme, the 24, 26, 27, 84, and 134 Psalms, the 2 of Samuel 6. 10. of Saint John vers. 22. to the end.

Vide inter leges Edwardi Confessoris cap. 3. Similiter ad dedicationes, ad Synodos & ad Capitula venientibus, &c. in eundo & redeundo sit summa pax.

We find in ancient times that Vaults, hollow places, or substructions under the ground were made by men for receipts or receptacles for keeping of their wives, children, money and goods secret, to avoid violence and rapine in time of hostility or rebellion, and we find no law against them.

These kind of buildings we had from the Germans, as we find it in Tacitus, who treating of the old Germans, saith, Solent & subterraneos specus aperire; & si quando hostis advenit, aperta populatur, abdita autem & deserta aut ignorantur, aut eo ipso fallunt, quod querenda sunt. They use to build Vaults under the earth; and if the enemy come, he destroyeth all open and above ground, but such things as lie hidden in the cave, either they lie unknown, or at least they deceive him, in that he is enforced to find them out, Neither have we found any

* Britton fo. 84. b.

Stow in his Survey of London, fo. 19.

* For so is the truth.

Ro. Hoveden Anno Dom. 1177. Holl. eodem An. fo. 101. b. 20.

8 H. 6. 32, 37.

De subterraneis substructionibus & cryptis.

Tacitus,

* In the manner of Minster Lovel in Com' Oxon. &c.

a Camden Linc. pag. 406.

b See the statute of 8 El. ca. 13. and the Letters Patents of the Lord Admirall.

c 4 H. 8. ca. 1. d De propugnaculis, munimentis munitoriis, &c. of Bulwarks, Barbicanes, Block-houses, Piles, &c.

e 13 E. 1. ca. 46.

32 Aff. 5.

7 H. 4. 39.

f 7 El. Dier 240.

g See the 2. part of the Institutes.

W. 2. cap. 24.

Lib. 5. fo. 101.

Lib. 8. fo. 46.

Lib. 9. fo. 54, 58.

h See lib. 4. fo. 84.

Lutterels case, & the authorities there cited.

i 31 Eliz. ca. 7.

Lamb. Perambulation of Kent. These words you shall read in Records concerning Priviledges.

k 29 E. 3. 16.

2. H. 4. f. 3.

9 E. 4. 34.

14 H. 4. ca. 2.

Lib. 11. fo. 29.

Alex Poulterers case.

any licence of the King to make them, nor punishment of any that made them without licence, and yet many have been made by many subjects, some where of * we have seen.

a We read of Alexander Bishop of Lincoln, in the reign of H. 1. and King Stephen, a Poorman boy, who was insanis substructionibus ad insaniam delectatus.

b No person can build or erect Light-houses, Pharos, Sea-marks or Beacons without lawfull warrant and authority. 4 Inst. 140.

Lumina noctivaga tollit Pharos æmula Lunæ.

In Light-house top is reard the light

As high as the moon that walkes by night.

c Prohibition was made by authority of Parliament for building and erecting Block-houses, Bulwarks, Piles and the like; for without Parliament subjects cannot be charged with building or erecting of them: and that Act is expired.

d The Lord of the Soil may build a Windmill, Sheepcote, Dairy, enlarging of a court necessary, or a curtilage in grounds, where men have common of pasture.

e A man cannot erect any building upon his own ground in the Kings Forest, but it is a purpresture, and may either be demolished or arrented to the Kings use, &c. at a Justice Seat.

f Concerning houses of husbandry and tillage, the statutes of 4 H. 7. cap. 19. 7 H. 8. ca. 1. 27 H. 8. ca. 22. 5 E. 6. ca. 5. 5 El. cap. 2. are repealed by the statute of 21 Jac. cap. 28. and the statutes of 39 El. cap. 1. & 2. are expired, for that they were so like Labyrinth, with such intricate windings and turnings, as little or no fruit proceeded of them.

g No man can erect an house or building to the nuisance of any other.

h See where a man hath any house or mill, &c. and having any priviledge or thing appurtenant thereunto, pulls it down and builds a new, where the priviledge or appurtenant remains, and where not.

i Concerning the erecting, &c. of Cottages, see the statute of 31 El. cap. 7. which could not be restrained in such sort as they are, but by authority of Parliament.

j There was a statute made Anno 35 El. (when I was Speaker) against buildings in the Cities of London or Westminster, or within three miles of the gates of the City of London, and against the dividing & converting of any dwelling-house or building into divers habitations, and against Inmates; but that endured but for seven years, and untill the end of the next Session of Parliament: which Act, being holden dangerous, was not continued at the Session of Parliament holden in 43 Eliz. being the next Session after the seven years, and therefore expired with the same. In the mean time there was a law made against new buildings, &c. which then was a warrant, and since hath been a colour for divers proceedings in Courts of Justice, not observing the expiration of that law; but now that law hath long since lost his force, and the ancient and fundamental Common law is to be followed.

k Sylliva, or Sulliva, is a word derived from the Saxon Sylle, and signifieth a poste or plate fixed in the ground: the Saxon word is not yet out of use, for every man knows what a groundstille is.

l Pera, a Peer, derived from the Latin word Petra: Plance, of the English word Planks, for boards or tables, in use also at this day.

m Having spoken of erecting of houses and buildings, &c. we will tell you what we finde in our Books and Records of Dilapidation, and decay of buildings.

n Dilapidation of Ecclesiastical Palaces, houses and buildings is a good cause of depopulation.

o It appeareth by the statute of 4 H. 4. cap. 2. that Depopulatores agrorum were great offenders by the ancient law, and that the Appeal or indictment thereof ought not to be general, but in special manner; and it provides, that the offenders therein might have their Clergy. They are called Depopulatores agrorum, for that by prostrating or decaying of the houses of habitation of the Kings people, they depopulate, that is dispeople, the towns.

Prohibitio

6 L. 532:
Hob. 234:
Roll. 1 p. 4
507:

Prohibitio Regis quod Incolæ de villa de Southampton non prosternerent domos suas in alias migraturi regiones.

Dorf. Claus. An. 43 E. 3. m. 23.

Simile pro magna Jermeauha.

Ror. Claus. Anno 21 R. 2. m. 15.

That which may lawfully be prohibited before it be done, may be justly punished after it is done.

And herewith we will close up this Chapter: that the law both saue the suppotation of houses of habitation and use for mankind.

First part of the Institutes, f. 54. b. 56. b.

CAP. XCVIII.

De Lupanaribus & Fornicibus, &c.

Brothel-houses, Estuis, Bordelloes.

The keeping of them is against the law of God, on which the Common law of England in that case is grounded. Non offeres mercedem proximi tui, nec precium canis in domo Dei tui, &c. Quia abominatio est utrumque apud Dominum Deum tuum.

Numb. 25. Deut. 23. 18. Ezek. 16. 24. 31. 39. Joel 3. 3. 2 Mach. 4. 12. Hospes meretricum Lena. Leno, unde Lenocinium.

And the keeper, he or she, of such houses is punishable by indictment at the common law by fine and imprisonment: for although adultery and fornication be punishable by the Ecclesiasticall law, yet the keeping of a house of Bawdry, or Stews, or Brothel-house, being as it were a common nuisance, is punishable by the Common law, and is the cause of many mischiefs, not only to the overthrow of mens bodies, and wasting of their livelihoods, but to the endangering of their souls. For the mischiefs ensuing hereupon, see 11 H. 6. cap. 1. 1 H. 7. f. 6. 12. 13 H. 7. 6. 27 H. 8. Ror. Parl. 14 R. 2. nu. 32.

* King H. 8. suppressed all the Stews or Brothel-houses which long had continued on the Bankside in Southwark, for that they were (as hath been said) prohibited by the law of God, and by the law of this land. And those infamous women were not buried in Christian buriall when they were dead, nor permitted to receive the rites of the Church whilest they lived.

* By Proclamation under the Great Seal 30 Martii, 37 H. 8.

The word Estuis or Stews is French, we having no English word for it.

Before the reign of H. 7. there were eighteen of these infamous houses, and H. 7. for a time forbade them: but afterwards twelve only were permitted, and had signes painted on their walls; as a Boares-head, the Crosse-Keys, the Gun, the Castle, the Crane, the Cardinals hat, the Bell, the Swan, &c.

Fabian. Chron. Stowe.

Many wicked & common women had seated themselves in a lane called Mather-lane, next to the house of the Friars Carmelites in Fleet-street: this being an open and known wickedness, King E. 3. to the end these Friars might perform their Vows, one of which was, to live in perpetuall chastity, took order for removing of these women. The Record saith, Rex precipit Majori Civitatis London quod amoveri faciat omnes mulieres meretrices in venella prope Fratres Carmelitarum in Fleetstreet inhabitantes.

In Dorf. Claus. 21 E. 3. Part 1. m. 6.

Fratres beate Marie de Monte Carmeli, called White Friars,

Read 1 Regum cap. 14. verse 24. eodem lib. cap. 15. verse 12. & 2 Regum cap. 23. verse 7.

And by the common law it appertaineth to the Marshall of the Kings House to see or protect the Court from Femmes puteins, which is more particularly explained by Fleta, who saith, Mareschalli interest virgatam a meretricibus omnibus protegere & del. berare. & habet mareschallus ex consuetudine pro qualibet meretrice cui infra metas hospitii inventa 4^a primo die; quæ si iterum in baliva sua inveniat, capiatur, & coram Seneschallo inhibeat ei hospitium Regis, Reginae, & liberorum suorum, ne iterum ingrediat, & nomina earum imbreventur;

7 E. 3. fo. 23. 24. Fleta lib. 2. cap. 5. Lib. 10. Le case de Marchalica, fo. 77.

E c

quæ

que si iterum invente fuerint hospicij sequutrices, tunc aut remaneant in priso-
na in vinculis, aut sponte prædicta hospicia abjacentur; quæ si autem tertio inventæ
fuerint, considerabitur quod amputetur eis tresforia, & tondeantur; quæ quidem
si quarto inveniuntur, amputentur eis superlabia, ne de cætero concupiscantur ad
libidinem.

Rot. Par. 14 R. 2.
nu. 32.

35 H. 6. Barre 162

1 H. 7. fo. 6, &c.

Domesday,
Chent. Dover.
Ibid. Cestrie ci-
vitas.
Ibid. Sudsex.
Lewes,
Domesday.
Huntedoie.

Bracton.
Fleta.
Rastall term. leg.
Stat. de exposit.
vocab.

14 R. 2. It is enacted that no Whores or Brothel-houses should be kept in
Southwark, but in the Common places therefor appointed.

So obvious and so dangerous was this infamous vice (the fairest end whereof
is beggary) that men in making of Leases of their houses did adde an expresse con-
dition, that the lessee, &c. should not suffer, harbour, or keep any Feme-puteine
within the said houses, &c.

See the case of 1 H. 7. the custom of London for entering into an house, and
arresting of an Adulteret, and carrying her to prison. In ancient times adul-
tery and fornication were punished by fine and imprisonment, and inquirable in
Tunnes and Leets by the name of Letherwite. We find in Domesday De
adulterio vero per totum Chent; habet Rex hominem (i. amerciammentum hominis)
& Archiepiscopus mulierem, (i. amerciammentum mulieris,) &c.

Vidua, si alicui se non legitime commisceat, 20. s. emendabit, puella vero 10. s.
pro consimili causa.

Adulterium faciens 8. s. & 4. d. emendabit homo, & femina tantundem. Rex
habet hominem adulterum, Archiepiscopus feminam.

But now these offences belong to the Ecclesiasticall Court.

Legrewita, or Logrewita, Legergeld, or Logergeld, of Legre or Logre for a bed
and Wice amerciamment, by common speech Letherwite or Lierwite, Lierwite,
Lothwite.

Childewite is for the Lord to take a fine for his bondwoman defiled and be-
gotten with child.

Bawdry, Lenocinium, unde Ribawdry & Ribaude, i. Impudius rabula. See
Parliam. 50 E. 3. nu. 61. of Ribands and Robertsmen.

CAP.

CAP. XCIX.

De Assentatione, Fucologia, Pseudologia,
Flattery.

W E find a law befoze the conquest against Flatterers in these words, Licceparj Leogonar nepepar jneapapar gober zmanan haban, &c. which Dr. Lambard tranſlateth thus, Assentatores, mendaces, pradores, & rapaces offentionem Dei gravissimam incurrant, &c.

The ancient Manuscript tranſlateth it thus, Seductores, Mendaces, Rapaces & Raptores Dei gravamen habeant. And both translations do in effect agree, for a flatterer is a seducer for some private end, by fained praise and humoring of another, whereby he hath an outreguidance of himself, his state and actions, Isti ducunt & seducunt.

The occasion of making this law was, that King Canutus had been seduced by flatterers, who had shewed him his face and state in a false glasse, making too great a shew of his own parts, actions and state, to the end to make him conceit himself to be better and greater then he was, and his adversaries less then in truth they were. Nay, this King by wicked flatterers assumed to him Divine power and honour: for coming from sea, he set his feet on the sea strand, as the sea was flowing, and commanded the sea not to rise to wet his Royalty and Majestick feet nor clothes. The sea keeping on his accustomed course, both wet his feet and thighs also; whereat being sore amazed, he repented his presumption (which he had undertaken by wicked flattery.)

And well is the flatterer marshalled in this law with Liers, Thieves and Raveners, for the Divine described flatterers to be those, Qui colunt aliquem, & auferunt ab eo aliquid temporarii boni. So as it is peccatum viscarum, it getteth away much and giveth smoke.

And the Holy Ghost hath styled flattery oleum peccatoris, that is, the oil of the sinner, *na' i' exo' lu'*, that is, of him that excedeth others in sin, and doth affect greatness: that is, the head, making it greater and more prosperous then it is, as you may read in the Prophet David, Corripiet me iustus in misericordia & increpabit me, oleum autem peccatoris non impinguet caput meum. Whereby he being both a King and a Prophet, preferreth the reprove, nay the sharpe rebuke of the Just and vertuous, befoze the smooth humouring of the flatterer (per nomen) of the sinner. This oleum peccatoris is mel venenatum & venenatum mellitum, and commonly affecteth greatness, and is called Lozdbane.

And again, David speaking of the flatterer saith, His words are smoother then oil, and yet are they very swords. Hæc dicit Dominus Deus, Væ qui consunt pulvillos sub omni cubito manus, & faciunt cervicalia sub capite universæ ætatis ad capiend' animas, &c. Thus saith the Lord God, Woe to them that sow pillowes under all armholes, and put kerchiefs upon the heads of every age to hunt souls. They make the King glad with their wickedness, and the Princes with their lies, In malicia sua lætificaverunt Regem, & in mendacijs suis Principes.

The flattering mouth worketh ruine. And more Kings and Kingdomes have been overthrowen by the means of flattery, then by publick hostility. And this is the cause that we have mentioned the said ancient law for their punishment, they be lawfully banished from Princes Courts, and Subjects houses.

Ut videat, cæco fit simia præda leoni:

Rex cæcus cernit, eum sycophanta perit.

¶ 2

¶ 2

Int. Ieger Canuti, fo. 106. c. 7. Lam. Fatalis magnarum potestatum pestis, adulatio. Semper assentor id, quod is ad cuius voluntatem dicitur, esse magnum; ut in Terentio, magnas vero agere gratias mihi, &c. satis erat respondisse magnas, ingentes inquit.

Psal. 141. 7.

Psal. 55. 21.
Ezek. 13. 18.

Oste. 7. 3.

Prov. 26. 28.
Qu. Curtius.

Nota, enemies to laws punished by the laws.

a Rot. Pat. Anno 17 H. 3. Nos integre & firmiter tenemus iudicium de Huberto de Burgo per Barones datum. Speed 18 H. 3. 520.

b Rot. Parl. 7 E. 2. Ne quis occasione per mortem Pet. de Gaveston. Hil. 3. 18. a. & ib. 321. a.

c Vet. Mag. Chart. 2 part. 44. ib. 10. exilium Hugonis, & 54. Ne quis occasione pro felonis in prosecutione d' Spencer patris & filii.

d Rot. Parl. 14 R. 2. nu. 3. & c.

e Rot. Parl. 18 H. 6. nu. 19. until 47. f Hollensh. 713.

a. 30. g Hollensh. 722, 748, 767. a.

h 2 H. 7. 10. Coram Rege, An. 1 H. 8. In information vers. D. Peter & alios.

The like indictment against Ed. Dudley.

Tr. 23 H. 8. coram rege. Rot. 14.

What fearfull ends flattering favourites, corrupters of their Sovereign Liege Lords, abusing their favours in subversion of their laws, have had, appeareth in our Parliament Rolls, Records and Histories.

King H. 3. had Hubert de Burgo Chief Justice and Earl of Kent, and many others: but this was his safety, that upon just occasion without any great grief he could forgive a favourite. See in the Preface to the second part of the Institutes, his counsel to H. 3. to burn Magna Charta.

E. 2. had Pierce de Gaveston, the Spencers, &c. and the Spencers proceedings against le grand Charter by name (amongst other things) tending to the subversion of law, &c.

R. 2. had Sir Robert Tresilian Chief Justice, &c. and Robert Earl of Devon and Duke of Ireland, &c.

H. 6. had William de la Pole Duke of Suffolk, &c. who endeavoured to have brought in the Civil laws, which was the occasion that the Chief Justice Fortescue wrote in the commendation of the laws of England, preferring them for the government of this land before the Civil laws. This Duke with others plotted the death and destruction of Humfrey the good Duke of Glouc. who ever stood in his way.

E. 4. had William Lord Hastings the Kings Chamberlaine, and Captain of Calice. All these came to fearfull and untimely ends.

R. 3. had Sir John Caresby one of the Justices of the Common Pleas, and Henry Duke of Buck. &c. private plotters and counsellors with R. 3. for the most execrable murder of his Nephews, E. 5. and Richard Duke of York. What a miserable end the Duke had, you know: and Justice Caresby in his Journey to London, in the Kings high way, had subitanam & improvissam mortem.

H. 7. had Sir Richard Empson, Edmund Dudley, &c. Sir Richard Empson was indicted, Quod ipse, consiliarius excellentissimi principis Henrici, nuper Regis Angliæ, septimi, Deum præ oculis non habens, sed ut filius diabolicus subtiliter imaginis honorem, dignitatem & prosperitatem dicti nuper regis, ac posteritatem regni sui Angliæ minime valere, sed ut ipse magis singulares favores dicti nuper Regis adhiberet, unde magnar fieri potuisset, ac totum regnum Angliæ secundum ejus voluntatem gubernaret, falso, deceptivo, & proditorie legem Angliæ subvertens, diversos ligeos ipsius nuper regis, ex sua falsa covina & subtili ingenio, contra communem legem regni Angliæ, de diversis felonis, &c. indictari fecit, &c. per quod plures & diversi populi dicti nuper Regis hiis gravaminibus & indebitis exactionibus multipliciter torquebantur, in tantum quod populi dicti nuper regis versus ipsum nuper Regem multipliciter murmurabant & malignabant, in magnum periculum ipsius nuper regis, regni sui Angliæ, ac subversionem legum & consuetudinum ejusdem regni, &c. And the like indictment was against Dudley.

H. 8. had Thomas Woolsey Cardinal. Ipse intendens finaliter antiquissimas Angliæ leges penitus subvertere & enervare, universumque hoc regnum Angliæ & ejusdem regni populum legibus Imperialibus, vulgo dictis Legibus Civilibus, & earundem regum Canonibus subjugare & subducere, &c.

And the like indictment was against Dudley. Qui eorum vestigiis insistant, eorum exitus perhorrescant.

But that right be done to him who was a faithful favorite and counsellor to this King, we have seen a Manuscript that relateth, that Charles Brandon Duke of Suffolk, a wife and warlike person, was for many years before his decease the greatest favorite the King had, upon whom he chiefly relied in all his weightiest affairs. This noble Duke deceased in August in the 37 year of the reign of King H. 8. After whose death the next time the King sat with his Counsel, missing the good Duke, he grievously lamented for him, and said, When I was offended with any (as often I was) and acquainted him therewith, that he ever laboured to mitigate my displeasure, and never spake to me evil of any of them. And the King looking upon the Lords of his Counsel one after another, said, and so (my Lord) cannot you say, perusing them all throughout. A royal commendation of this great Duke, and a great argument of his piety and honour,

honour, that no Subject had ever the indignation or displeasure of his Sovereign by any private whispering of his.

We will conclude this chapter with one of our own Histories. Generaliter cunctorum habitatorum terre peccatis inclusive ordines sumendo Mendicantium ad cumulandum causas malorum, &c. isti possessionis invidentes, procerum crimina approbantes, commune vulgus in errore foventes, & utronumque peccata comedentes, pro possessionibus acquirendis, qui possessiones renunciaverant, pro pecuniis congregandis; qui in paupertate perseverare juraverant, dicunt bonum malum, & malum bonum, seducunt Principes adulationibus, plebem mendaciis, & utroque fecum in devium pertrahentes, &c. Note what is said, that the full heap of the causes of Gods vengeance in those dates was made up by those flattering preaching Friars. But Parliaments, Palaces of Princes and Pulpits should be free from adulation and flattery.

Anno 5 R. 2.
Th. Wallp. 281.

Read the story,
and see the most
lamentable estate
of those times.
Note these three
P P P.

C A P. C.

Of false Imprisonment.

SEE the Second part of the Institutes, the statute de 1 E. 2. de frangentibus prisonam, and the exposition upon the same.

See the petition of Right, 3 Car. Regis, and Mag. Chart. ca. 29. And it is to be observed that before the Conquest it was thus provided, Qui hominem Pagani immerentem vinculis contrinxerit, 10 solidis noxiam sarcito; eum si verberibus affecerit, 20 solidorum poena esto; si suspensum in sublime rapuerit, 30 solidis culpa pensator; si contumeliose capillum ejus morionis in morem rotonderit, 10 solidi praestato; si caput in morem sacerdotis raserit, nec ipsum ligaverit, 30 solidos numerato; si barbam illi refecerit, 20 solidorum compensatio sequitur; si denique ei vinculis constricto capillos in morem sacerdotum abraserit, 60 solidos pendito.

Intr. leges Alvers-
dicap. 31.

By way of addition, here it is necessary to be known how and by what means one that is in prison may be discharged. Every man that is in prison, either is imprisoned without lawfull Mincimus (whereof we have spoken before ubi supra; and how he may be freed from imprisonment in that case) or with lawfull Mincimus. He that is lawfully imprisoned, is either imprisoned by lawfull commandment, and order of warrant, or by the Kings writ. By commandment and order of any Court of Record; and this commandment, warrant or writ is either for causes not being treason or felony, imprisonment of the same, nor other publick offence or cause, or inferior causes to these, as contempts, private actions or suits. If any Court of Record commit a man for a contempt done in Court, they may discharge him by like order at their pleasure; but if they having authority, do commit him for treason, felony or other crime, or for suspicion of the same, they cannot discharge him until he be inquired of, and either indicted and acquitted, or an ignominious found, and delivered by proclamation. And so it is if any be taken and imprisoned by lawfull warrant, or the Kings writ for treason, felony or other crime, &c. he cannot be discharged by any without legal proceeding, but by the King only.

a For bailment,
See the statute of
Mag. Chart. ca. 29.
W. 2. ca. 15. and
the exposition
thereof.
1 & 2 Ph. & Mar.
ca. 13.
2 & 3 Ph. & Mar.
cap. 10.
b 14 H. 6. 8. F.N.
B. 167. b.
See 12 H. 6. 3.
c Mich. 13 Jac. in
banke le Roy.
1st. Withers &
Herly, adjudge
accord.
27 H. 8. 28. b.
1 R. 2. cap. 12.
10 H. 7. 3. a. per
Vavasor.
13 E. 3. Bar. 253.

If a Tagrant, refusing to serve, had been committed to prison upon the statute of 23 E. 3. of Labourers by the Lord of the town, or Justice of Peace, they might have discharged him; but as the Chancery, &c. may commit a man for a contempt before him in Court, and discharge him again at his pleasure.

If a man be taken by the Kings writ in an action of debt or another private action, the Plaintiff may discharge the Gaoler of him and set him at liberty, though he be in execution: but if he be taken in an Appeal of Death, Robbery,

Rape,

Kings, &c. the Plaintiff cannot discharge him, because it is a publick offence wherein the King hath an interest, and he may after Pursuit by the Plaintiff be arraigned at the Kings suit.

Fortescue ca. 53.
fol. 137. b.

There are two great adversaries to the due execution of these laws (as before hath been touched) especially in criminal causes, viz. *Præcipitatio* & *morosa cunctatio*. *Præcipitatio*; as a man or woman to be committed to prison, and within so short a time to be indicted and arraigned, as it is not possible for them to send for or procure their witnesses: this certainly is precipitation, for the law both in personal and real actions both give the party, Tenant or Defendant, a convenient time without respect of persons to answer, &c. much more it ought to be in case of life. *Nec unquam in judiciis tantum eminet periculum, quantum parit processus festinatus*: and again, *Crebro in deliberationibus judicia murescunt, in accelerato processu nunquam*: and specially in case of life. As for *morosa cunctatio*, *slowward or wayward delay*; see the Second part of the Institutes Glouc. ca. 26. And we will conclude this chapter with the rule of law, *Quod in criminalibus probationes debent esse luce clariores*.

CAP. CI.

Of Judgements and Execution.

Judicium is derived à Jure & dicto, & est quasi Juris dictum, and therefore if the judgement be erroneous, both the judgement and execution thereupon, and all the former proceedings shall be reversed by writ of Error: but if the former proceeding and judgement be good, if the execution be erroneous, the execution shall only be reversed. And because the judgement is the guide and direction of the execution, we shall treat principally of the Judgement, and incidently of Execution.

Of Judgements, some be by the Common law, and some by Statute law, and some by Custome.

Of Judgements by the Common law, some be in criminal causes or Pleas of the Crown, concerning the life of man (whereof we are principally to intreat;) and of these some be expresse, and some implied. Other Judgements at the Common law be in actions real and mixt, of which some be *Judicia interlocutoria*, and some *ultima seu principalia*: and again, de *principalibus*, quædam sunt *finalia*, & quædam non sunt *finalia*. Of Judgements by Statutes, some be in criminal causes, and some in Common pleas: but Judgements by Custome are only in Common pleas.

All Pleas of the Crown, concerning the life of man, are divided into treason and felony; and treason into High treason and Petit treason, and felony into all the several branches abovesaid. And as in the case of High treason, (as it hath before appeared) some be far more horrible and odious then other, yet (one case excepted, as before hath appeared) one & the same Judgement is given for all: so in cases of Petit treason, one judgement is given in all, nay in all the several cases of felony, though some be far more heinous then other, yet all being but felony, one and the same Judgement is given. See the judgement and forfeiture in cases of treason, felony, &c. in the several titles thereof: these we will add.

6 El. Dier. 230.
See before in the
chapter of treason.

Judgement in High Treason.

Pl. Com. 387. b.
See Stanford
182. d. c.
Lib. Int. Co. 361.

See the book of Judges cap. 19. ver. ult. Consider, consult, and give sentence. 19 H. 6. 47. Trahe, pende, & distole.

Bract. li. 3. fo. 118. b. *Crimen lesa majest. ut si contra personam ipsius regis sit præsumptum, quod quidem crimen omnia alia crimina excedit quoad penam.* Idem l. 3. fo. 104. b. maketh mention of execution laqueis & securi, Parliament. 21 R. 2. inter placita Coron. nu. 50.

Et super hoc visis, & per curiam hic intellectis omnibus & singulis præmissis, * consideratum est, quod prædictus R. usque furcas de T. 1 trahatur, & 2 ibidem suspendatur per collum, & vivus ad terram prosteratur, & 3 interiora sua extra

ventrem suum capiantur. Ipsaque vivente comburantur; & 5 caput suum am-
punctur, quodque 6 corpus suum in quatuor partes dividatur, ac 7 quod caput &
quartieris illa ponantur ubi dominus rex ea assignare volit.

Implied in this judgment is, First, the forfeiture of all his Mannors, Lands,
Tenelements and Hereditaments in fee-simple as for tall, of whomsoever they be
holden. Secondly, his wife to lose her Dowry. Thirdly, he shall lose his chil-
dren (so they become base and ignoble.) Fourthly, he shall lose his posterity, for
his blood is stained and corrupted, and they cannot inherit to him or any other
Successor. Fifthly, all his goods and chattels, &c. And reason is, that his body,
lands, goods, posterity, &c. should be torn, pulled asunder and destroyed, that in-
tended to tear and destroy the Majesty of government. And all these several
punishments are found for treason in holy Scripture,

1 Reg. 2. 28, &c. Joab tractus, &c.

Esther 2. 22, 23. Bichan suspensus, &c.

Acts 1. 18. Judas suspensus crepuit medius, & diffusa sunt viscera ejus.

2 Sam. 18. 14, 15. Infixit tres lanceas in corde Absolon cum adhuc pal-
pitaret, &c.

3 Sam. 20. 22. Abcissam caput Sheba filii Bichri.

2 Sam. 4. 11, 12. Interfecerunt Barnan & Rechab, & suspenderunt manus
& pedes eorum super piscinam in Hebron.

Corruption of blood, and that the children of a Traitor should not inherit,
appeareth also by holy Scripture.

Psal. 109. 9, 10, 11, 12, 13. Mutantes transferantur filii ejus, & mendicent, &
ejiciantur de habitationibus suis, & discipiant alieni labores ejus, & dispareat de
terra memoria ejus.

The judgment of a woman for High treason is to be drawn and burnt.

Sir Andrew Harkley Earl of Carlisle, convicted, degraded and attainted of
treason.

*Judgment in Petit treason, where he is convicted thereof by ver-
dict or confession.*

Super hoc visis, &c. ut supra, Consideratum est, quod predictus R. usque furcas
de T. trahatur, & ibidem suspendatur per collum, quousque mortuus fuerit.

But a woman is to have judgment to be drawn and burnt as well in case
of Petit treason as High treason, and ought not to be beheaded or hanged.

* De morte mariti si compertum est uxorem, &c. igne Britanni interficiunt.

Bracton li. 3. fo. 105. 2. Igne contremantur qui salutem dominorum suorum in-
fidiauerint: idem fo. 104. b.

*Judgment in felony, where he is convicted thereof by ver-
dict or confession.*

Et super hoc visis, &c. ut supra, Consideratum est, quod predictus R. suspenda-
tur per collum, quousque mortuus fuerit. Bracton lib. 3. fo. 104. b. speaketh
De laqueo.

And it is a maxime in law, that execution must be according to the judge-
ment. Ea quae in curia nostra rite acta sunt, debet executioni demandari debent:
* and for expresse authority, non licet felonem pro feloniam decollare; and yet
some examples are to the contrary.

True it is that the Lord of Hungerford of Hefesbury was in 32 H. 8. at-
tainted of Buggery, and had judgment to be hanged by the neck untill he was
dead; and yet on the twenty eighth day of July in the same year was beheaded
at the Tower hill. But as true it is, that Thomas Pines Lord Dacres of the
South, in anno 33 H. 8. was attainted of murder, and had judgment to be han-
ged by the neck untill he was dead, and according to the judgment was han-
ged at Tibbott the twenty eighth of June in the same year. And true it is that
Edward Duke of Somerset was attainted of felony in anno 5 E. 6. and had
judgment to be hanged by the neck untill he was dead, and on the twenty se-
cond

35 H. 8. Br. For-
feiture 99.

Attainder
for treason saws parolls:
for future for King

Drawing.

Hanging
Bowelling.
The heart, &c.
while he lived.

Beheaded.
Quarters hanged
up.
Dama & memo-
ria.

25 E. 3. 42. b.
Coron. 130.
Brit. ca. 8. f. 16. b.
accord.
b Degradation.
Hil. 18 E. 2. Co-
ram Rege, Rot.
34, 35. Walsingh.
p. 118.

19 H. 6. 47.
* Com. Caesar ante
Christum natum,
1600 annis, what
the Judgment
was for Petit
treason. 1 R. 3. f. 4.
25 E. 3. 42.
12 Aff. 30.
6 E. 4. 4. a & b.
See the Preface
to the sixth part
of Reports, what
the law was before
the Conquest,
Anno Dom. 995.
in case of felony.
* Pasch. 20 R. 2.
Coram Rege;
Rot. i. Lincoln.

See before cap.
Murder.

cond

cond of February in the same year was beheaded at the Tower-hill. And as true it is, that 3 & 4 Ph. and Mar. the Lord Stourton was attainted of murder, and had judgment to be hanged by the neck untill he were dead, and according to the judgment, the fifth of March in the same year was hanged.

In case of High treason, beheading is part of the judgment, and therefore the King may pardon all the rest saving beheading, as is usually done in case of Nobility. But if a man being attainted of felony, be beheaded, it is no execution of the judgment, because the judgment is, that he be hanged untill he be dead. In this case the judgment doth belong to the Judge, and he cannot alter it; the execution belongs to the Sheriff, &c. and he cannot alter it. And if the execution might be altered in this case from hanging to beheading, by the same reason it might be altered to burning, stoning to death, &c. To conclude this point, *Judicandum est legibus, non exemplis*; and *Judicium est Juris dictum*, & *Executio est executio Juris secundum judicium*.

The forfeiture in case of Petit treason and felony (which is implied in the judgment) is all one, which you may read in the First part of the Institutes, Sect. 747.

Quando peccaverit homo, quod morte plectendus est, & adjudicatus morti appensus fuerit in patibulo, non permanebit ejus Cadaver in ligno, sed in eadem die sepelietur. And the reason that Divines yield hereof is, for that by the execution of the judgment by death, the law is satisfied, and abhorreth cruelty, and in that case, *Mors dicitur ultimum supplicium*.

And herein this is observable, that in Treason and Felony the judgment is only of the fatall and corporall punishment, and nothing of the forfeiture, which is implied; but in Common Pleas the judgments are more particular.

Judgment in Appeal, when the Defendant joyning battail is vanquished in the field, &c.

8 E. 3. Judgment
225.

If the Defendant in Appeal be vanquished in the field, the Record reciteth the vanquishing in the field. Ideo consideratum est quod sus. per coll. and so it is when the Defendant is vanquished and slaine in the field, yet the judgment is ut supra. Otherwise there should be no escheat. See the Second part of the Institutes, W. 1. ca. 14.

Judgment in Treason or Felony, wherein neither any corporall punishment nor forfeiture is expressed.

Regist. 164. b.
Fecit feloniam
pro qua utlagatus fuit.

In case of Treason or Felony, if any person be outlawed, the judgment upon the Writ at the fifth County Court upon default of the party is, Ideo, &c. per judicium Coronatoris Domini Regis comitatus predicti utlagatus est. Which writ being duly returned of Record by the Sheriff, the party shall have the like corporall punishment, and shall lose and forfeit as much as if he had appeared, &c. and judgment had been given against him in case of treason or felony respectively. And note that in these words (*ideo utlagatur*) both the corporall punishments and forfeiture also are implied: and if the proceeding therein or the judgment be erroneous, and upon his appearance upon the *Capias utlagatum*, if it appear to the Court (whereof any man, as *amicus curie*, may inform the Court) that the party may either avoid the outlawry against him by writ of error, or by plea, the Court ought not to award execution against the party, but assign him or her counsell learned, and require him or her by their advice either to bring a writ of error or plead: but if the party refuse to bring his writ of error or plead after convenient time be given, if the outlawry be erroneous and not void, the Court may award execution. And so it was resolved, *Termino Hil. Anno 3 Jacobi Regis*, by the whole Court in the King Bench, and others precedents thereof shewed in the reigns of H. 6. E. 4. and one in the reign of Queen Eliz. which we saw; for as long as the attainder by outlawry standeth in force, the party outlawed cannot be drawn in question by any new indictment or appeal for the treason or felony for the which he was outlawed; for *Autesfoiz* attain

19 H. 6. 2. a.
Error Fi. 26.
28 E. 3. 91. a.
6 H. 4. 6.
9 H. 7. 19. b.

Hil. 3 Ja. Coram
Rege per curiam,

Autesfoiz attain
de mesme le of-
fence.

attain

arraint for the same offence is a good plea to free him from answer in that cause, albeit the Record be erroneous. But if the Attainder or Outlawry be void against him, then may he be either arraigned upon the former indictment, or appeal, or newly indicted, &c. if there be cause. And therefore the Judges are to take due consideration of the whole Record of the Attainder or Outlawry, that they may be truly informed of the true state of the cause, before they award execution of death against him upon the Outlawry. Read Bracton lib. 3. Tract. 2. cap. 14. and Britton cap. 13. fo. 20, 21. excellently treating hereof, and Fleta lib. 1. cap. 27.

Vide 6 E. 3. 55. in Ajel.
12 E. 3. Esch. 14.
19 E. 2. Cor. 387.

Bract. li. 3. f. 131.
Britton fo. 20, 21.
Fleta li. 1. ca. 27.

And by the Common law Aurerfoitz attainr, &c. of the same felony was a good plea, as well in an Indictment as in Appeal by the Common law. See the statute of 3 H. 7. cap. 1. concerning appeal of death: so as in an appeal of death at the suit of the party, Aurerfoitz attainr de mesme le mort, is no plea at this day, but in case of an Indictment of death at the suit of the King, Aurerfoitz attainr de mesme le mort in appeal is a good plea. Aurerfoitz attainr de murder is a good plea to an Indictment, &c. of Petit treason of the same death, for in effect it hath the same judgement, and the self-same forfeiture. So likewise if a man be attainted of manslaughter, it is a good bar to an indictment of murder of the same death, & e converso.

4 Co. 46. a. f. ca. 28. appeals
2. Indictments

By the Common law if a man were attainted of a felony done by him, and admitting he were after pardoned, he cannot at the suit of the King be impeached for any felony whatsoever before his said attainder by him committed, for by the Attainder he was mort in ley; and in that case he had the judgement due for felony, viz. *Suf. per coll.* But the party may have his Appeal of Robbery, for a robbery done before the felony whereof he was attainted, because in the Appeal he is to have restitution of his goods, besides judgement of death. * And if the party attainted of felony had committed High treason before his Attainder, he shall answer to the treason notwithstanding his Attainder of felony, because the King by the treason was intitled to have the forfeiture of all his lands, of whomsoever they were holden. Also for High treason there is another judgement, being an offence of an higher nature: but being attainted of felony, if he commit treason afterwards, he shall answer thereunto, because it is of higher nature than the felony, but it shall not debeat the right of Escheat, which lawfully was by the felony vested in the Lords, contrary to the opinion of Justice Stamford in that case, for the act and offence of the party shall not debeat the lawfull Escheat of the Lords: but if a man be attainted of treason, he cannot be after attainted of a former treason, *causa qua supra*.

Aurerfoitz attainr
dun aurer offence.
12 E. 3. 100.
101.
28 E. 3. 90. b.
Dier. 4 Eliz.
Stones case.
6 H. 4. 6. 10 H. 4.
Coron. 237.
6 E. 3. Cor. 394.
22 E. 3. Cor. 471.
Stanf. f. 107, 108.
See 44 E. 3. 44.
7 H. 4. 31.
4 E. 4. 11.
* 1 H. 6. fo. 5.
Rot. Parl. 3 R. 2.
nu. 18. Jo. Imperials case.

Where a little before it is said, that a felon by his Attainder is mort in ley, it is to be understood of such former offences as require *poenam mortis*: for notwithstanding the Attainder, his body remains subject to arrests and execution for debts, &c. Vide hic paulo post, Trussells and Prestals case in margine. Albeit for felony a man be adjudged to his penance, Pain fort & dure, yet he may be impeached for any former felony, because the judgement is not given for the felony, but for his contumacy.

Dier 14 El. 308.
Cobhams case.

If a man be attainted of Petit Larceny, he may be after attainted of felony, for the which he shall have judgement of death, because it is an higher offence, and is to have another judgement.

Aurerfoitz acquite, and the Judgement thereupon.

But Aurerfoitz acquite must be of the same felony, and albeit he be acquit of the latter felony, yet may he be arraigned of any former felony: and so it is in case of treason, Aurerfoitz acquite of treason must be of the same treason, for it acquiteth no other, because he ever remained a person able.

See Stanf. 105. a
& b. &c.

And albeit at this day in an appeal of death, Aurerfoitz acquite upon an indictment of the same death is no bar, yet in an indictment of death, aurerfoitz attainr de mesme le mort in an Appeal is a good bar.

3 H. 7. ca. 1.
15 E. 3. Tit.
Coron. 116.
15 Aff. p. 7.

In an Indictment or Appeal of death, if it be found that he killed him in

f f

hts

his own defence, he is acquitted of the felony for ever.

Lib. 4. fol. 44, 45.

And so it was adjudged, Mich. 33 & 34 Eliz. coram Rege, in an Appeal of death between Katherine Wrote, and Tho. Wiggess. Vid. 19 E. 3. Barre 444.

Vi. 3 H. 4. f. 3. 11.

It appeareth in Vauxes case, that if a man be erroneously acquitted of felony by verdict and judgement thereupon given, yet if the Indictment, &c. be insufficient, he may be indicted againe for the reasons and causes in that case reported, which you may read there at large, and need not here be repeated: And thereunto this we will add, that the reason wherefore upon an erroneous judgement of condemnation, the party (as hath been said) is driven to his Writ of Error, and in the case of an erroneous judgement of an acquittal, that no Writ of Error needeth to be brought by the King, but the offender may be newly indicted, &c. is this, That in the case of condemnation, the judgement is, Quod suspendatur, &c. which is the judgement of law due for the offence, and ought to be given therefore, and can have no other intendment: but in the case of Acquittal the judgement is, Quod eat sine die, &c. which may be given as well for the insufficiency of the indictment, as for the parties innocence or not guiltinesse of the offence. And the Judges of the cause ought before judgement to look into the whole Record, and upon due consideration thereof to cause it to be entered, Ideo consideratum est quod eat sine die; which upon that report, and this addition implied therein, we hold may satisfie the studious reader.

Auter foits conviēt de mesme le felony devant judgement.

Lib. 4. fo. 45, 46. Holcrofts case, Second part of the Institutes, Art. super chart. cap. 3.

* Dyce 214. 215. a. (30) Lib. Iatr. Co. 53, 54, &c. Lib. 4. fo. 40. Wetherels case. Stanf. lib. 2. ca. 37. * Auter foits conviēt, dun auter felony. 25 E. 3. cap. 5. pro Clero.

Vid. Pasc. 39 E. 3. Rot. 95. Scire fac. Dominis mediatis & immediatis.

For this division see Holcrofts case before in the Chapter of Murder, and Lib. 4. fo. 45, 46. where the Statute of 3 H. 7. cap. 1. is well expounded; and the second part of the Institutes Artic. super Chart. cap. 3. & Lib. Intr. Co. fo. 53, 54, &c. and Lib. 4. fo. 40. Wetherels case; and Stanford Lib. 2. cap. 37. in pl. coron.

* Before the Statutes of 8 Eliz. cap. 4 and 18 Eliz. ca. 6. if a man had committed divers felonies, if he had been indicted of the last, and had benefit of his Clergy, he could not have been impeached for any of the former felonies, albeit for the same he could not have had his Clergy: by that Act it is provided, that notwithstanding the allowance of such Clergy, he may be impeached for any former offence, for which he could not have had his Clergy.

Judgement to reverse an outlawry for treason or felony.

The judgement to reverse an outlawry of A. B. in case of treason or felony in a Writ of Error is, Ideo consideratum est quod utlagaria predicta ob errorem predictum & alios in recordo & processu predicti compert, revocetur, annullatur, & penitus pro nullo habeatur, & quod predicti A. B. ad communem legem & omnia quae occasione utlagariae predictae amisit, restituantur, &c. & quod ipse eat sine die.

If the outlawry be avoided by plea, then the judgement is, Ideo consideratum est quod predictus A. B. de utlagaria predicta exoneretur, & quod ipse ad communem legem, & omnia quae occasione utlagariae predictae amisit, restituantur, & ea occasione non molesteretur in aliquo, nec gravetur, sed sit, & eat inde quietus.

If A. B. be indicted of treason or felony in the Kings Bench, or if he be indicted before Commissioners of Oier and Terminer, or any other, and the Indictment of treason or felony is removed into the Kings Bench, and by Process out of the Kings Bench he is erroneously outlawed and so returned, a Writ of Error may be brought in the Kings Bench for reversal thereof.

And where it is holden by some, that if any person be attainted of High Treason by the Common law, that no Writ of Error should be brought for the reversal of that attainder, by reason of these words of the Statute of 33 H. 8. cap. 20. viz. And if any person or persons shall be attainted of High Treason by the course of the Common law, &c. that every such attainder by the Common law shall be of as good strength, value, force and effect, as if it had been done by authority of Parliament: But the contrary hereof was resolved at a Parliament holden Anno 28 Eliz. that a Writ of Error should be maintained for the reversal of erroneous attainders of High Treason by the Common law: for that Statute of

Stanf. pl. cor. 18. k. l. 33 H. 8. cap. 20.

33 H.8. is to be intended of lawfull attainders by the due course of the Common law, and not of erroneous or void attainders. And thereupon at that Parliament holden anno 28 Eliz. an Act was made, That no Record of attainder of any person or persons, of or for any High Treason, where the party so attainted * is or hath been executed for the same treason, shall be, &c. in any wise hereafter reversed, undone, avoided, or impeached by any plea, or for any error whatsoever.

* And albeit judgment be given against a man in case of treason or felony, yet his body is not forfeited to the King, but untill execution remains his own. And therefore before execution, if he be slain without authority of law, his wife shall have an Appeal; for notwithstanding the attainder he remained her husband. And after such attainder his body may at the suit of a Subject be taken in execution upon a judgment or statute, &c. And he may be executed for treason or felony, notwithstanding such execution had against him. And in an Action of debt, or other Action brought against a person attainted, he cannot plead the attainder, and demand judgment, if during the attainder he shall be put to answer: ^b for upon consideration had of the books in 11 Aff. 27. 2 E. 4. 1. 4 E. 4. 8. 6 E. 4. 4. 6 H. 4. 6. 8 Eliz. Dier 245, &c. it was adjudged that the person attainted should not plead the said plea, but should be put to answer. And there is a great diversity between an attainder of treason or felony, and an entry into Religion; for he that is attainted of treason or felony hath capacity, and ^c may purchase lands to him and his heirs, but so cannot he that is entered into religion. And it is against a rule in law, that any man of full age should be received in any Plea by the ^d law to disable his own person, ^e or take advantage of his own wrong. And if the person attainted be beaten or maimed, or a woman attainted be ravished, after pardon they shall have an Action of battery, Appeals of mayme, or Rape. See Lib. Intr. Co. 247, 248.

^b In ancient time a man indicted or appealed of life or member, or imprisoned, &c. should not be compelled to answer at other mens suits: but (as before it appeareth) these opinions have been justly changed.

^c There was a notable case adjudged in the Kings Bench Mic. 26 & 27 Eliz. wherewith I was well acquainted, concerning the matters of outlawry and errors before spoken of, which was in effect as followeth.

Ninianus Melvine nuper de Stedwich in Com' Dunelm' at Anno 1 & 2 Ph. & Mar. was indicted in the Kings Bench of High Treason, and upon Proses he was outlawed, and so returned; and his daughter and heire brought a Writ of Error in the Kings Bench, wherein two errors were assigned. 1. That before the Erigent the 2. Capias with a Proclamation was awarded to the Sheriffe of the County Palatine of Durham, where it ought to have been directed to the Chancellor of that County. ^e For that point see 30 H. 6. 6. 36 H. 6. 35. 1 E. 4. 10. the book of Entries Roll. fo. 52. Stanf. pl. cor. 68, 69 & 70. Vid. 19 H. 6. 2. 31 H. 6. 11. But the Court gave no opinion concerning this Error. The other Error that was assigned was, that the Sheriffe returned upon the said Capias, that at his Court holden at the City of Durham the eighth day of July in the second & third years of the reign of King Philip and Queen Mary, he made the Proclamation, &c. and there were no such years: for Queen Mary began her reign the 6 day of July, and the 25 day of July in the 2 year of her reign she married King Philip; so as between the 2 day of July and the 25 day of July, the Queen wrote two years before the King. And therefore there could be no such years as 8 July Anno 2 & 3. but it should have been 2 & 4. And so was the clear opinion of the whole Court. But then it was objected, that by the said Act of 35 H. 8. and Stanfords opinion thereupon, that the attainder by outlawry being an attainder by the Common law, it could not be reversed by Writ of Error, for that the said Act of 35 H. 8. was to be intended of lawfull attainders: And after great deliberation the outlawry of treason was reversed. And I take it, it shall not be altogether impertinent, since I am it shall not be unprofitable, to report the consequent of this reversal. In the next Term, sc. Term. Hil. anno 27 Eliz. for that Queen Eliz. had the lands whereof the said Ninian was seised in fee; his wife

* Nota, this Act extends only to attainders of treasons before the Act of 28 El. where the party hath been executed, and not to attainders of treasons afterwards. ^a What interest the King hath in the body of the attainted before execution.

^a 35 H. 6. 63. ^b See Britton, ca. 122. Fleta lib. 6. cap. 6. 7.

^c Mich. 38 & 39 Eliz. in coi banco Int. Banister & Trussell attaint de felony.

Vide Mich. 33 & 34 Eliz. coram Rege, Rot. 532. Int. Ognel & Trussell.

Mic. 32 Eliz. inter Wade plaintife, & Prestal defendant attaint de haut treason, coram Rege. Vid. sup. ^d See the first part of the Institutes, Sect. 1.

^e Car si homo purchase.

^f Ibid. Sect. 199, 200. mort in ley. ^f First part Inst. Sect. 405.

^g 45 E. 3. 5. a.

^h 18 E. 4. 25.

ⁱ 15 E. 4. 5. a. & c. Lit.

^j Brit. ca. 122. a.

^k Encusment de crime.

Fleta lib. 6. c. 6, 7, &c.

^l Mic. 26 & 27 El.

Ninian Melvins

case in the Kings

Bench in Bre de

Errore.

^m See the Stat. of

8 H. 6. cap. 10.

Hil. 27 Eliz. in Filicis Cancellaria.

Vide Lib. 1. fo. 93.
Binghams case.
See the first part
of the Institutes,
Sect. 55.

4 H. 7. cap. 24. the
first saving.
42 E. 3. 75.
4 H. 7. fo. 22. &
11. 12.
38 H. 6. 43. & 12.
21 E. 4. 23. Dier
29.
H. 8. fo. 32. pl. 8.
idem.
6 Eliz. 238. pl. 45.
3 Eliz. fo. 188.
pl. 8. a.
Lib. 8. fo. 43. b.
Dr. Druyca case.
b 34 H. 6. fo. 2.

* Note.

626 H. 8. cap. 13.
5 E. 6. cap. 11.
These statutes
not only extend
to all treasons by
the statute of
25 E. 3. by the
Common law,
but by any other
statute.
Vi. Dier 12 Eliz.
fo. 287. accord.
First part of the
Institutes, Sect.
479.

by petition of right, which comprehended the title of the wife and the title of the Queen, claimed her dowry, which in effect was this: That her husband was seised of certain lands in fee, and took her to wife; and before his treason committed Anno 1 Mariz levied a fine with Proclamations to another, whose estate the Queen had by lawfull conveyance therein expressed; and that after ward her said husband was attainted of High Treason by outlawry, *in supra*; and died in anno 4 Eliz. which outlawry was the last Terme reversed in a Writ of Error, as is above said. Which Petition being indorsed by the Queen, Scit drou fait al partie, and delivered into the Chancery, Sir Thomas Bromley, a man of great gravity and judgment in law, then being Lord Chancellor of England, by advice of all the Judges resolved these four points following. First, that the petitioner need not to have any office to finde her title, because her title standeth with the title of the Queen, and the Queen is not intituled by office (which she might traverse, or confesse and avoid) but by conveyance, which she affirmeth. Secondly, that a fine with Proclamations, and five years past after the death of the husband doth bar the wife of her dowry, and that the consue shall take advantage thereof, and of the attainder also. Thirdly, that albeit five years and many more in this case were past since the death of her husband, yet the said fine with Proclamations did not bar her; because as long as the said attainder of treason stood in force, she was barred of her dowry, and could not have any remedy, or pursue her title, untill the outlawry were reversed, and then her title of dowry did first grow due unto her, and therefore she might within five years after the reversal of the said outlawry, pursue her title by the expresse words of the saving of the Act of 4 H. 7. Fourthly, albeit an attainder reversed by a Writ of Error, is as concerning restitution to the party by relation from the beginning become of no force, and the Record so annihilated thereby, as Nul tiel Record may be pleaded thereunto: yet this relation shall never work a bar, and consequently a wrong to a stranger, but that the truth of the matter may be shewed, viz. the Record, and the reversal of the same: and the rather (as some said) because the wife could not have any Writ of Error to reverse the outlawry, so as she had no mean to pursue her right so long as the outlawry remained in force, which it did, untill it was reversed by error. But admit the wife had been (in a remote degree of consanguinity) heir to her husband, so as she might within five years after the death of her husband have had her Writ of Error after the death of her husband to reverse the outlawry, and to enable her self to pursue for her dowry, and nevertheless not the outlawry within the five years: I hold in this case that she shall have five years after this reversal, and that within the said saving of the statute of 4 H. 7. for then did her title of dowry (as hath been said) first grow unto her, and it was not in her power to reverse the outlawry when she would. And in this Terme of St. Hilary, Popham Attorney General, according to the said resolution of the Lord Chancellor and Judges, confessed the Petition to be true; and thereupon Judgment was given, that she should be indorsed, and was indorsed accordingly.

By the statute of 26 H. 8. and 5 E. 6. it is enacted, that all Protes of outlawry against any offenders in treason, being out of the Realm, or beyond the seas, at the time of the outlawry pronounced, shall be as good & effectually as if the offenders had been within the Realm at the time of the outlawry pronounced. And the said Statute of 5 E. 6. cap. 11. that if the party outlawed shall within one year after the outlawry pronounced, yield himself to the Chief Justice of England, and traverse the said indictment, &c. and thereupon be found not guilty by verdict, he shall be clearly discharged of the said outlawry. *5. E. 6. Stat. 6. ca.*

Judgment in case of abjuratiō for felony, whiles it was of force.

After the flying of a felon for any kinde of felony whatsoever, wher he is arrested (but in case of High Treason or Petit Treason a man could never abjure, because the Coronor is not allowed by law to be a Judge of those heinous crimes) into a Church, &c. for safeguard of his life, and upon his prayer of a Coronor,

Coroner, and his voluntary and particular confession of the felony before the Coroner, naming the certain time, the judgment was, Idem. A. petit de prefato Coronatore regni domini Regis Angliæ abjurare: Super quo tradit^o ei libro p^o prefat^o coronatore, idem A. regni predicti coram prefato coronatore predicti die &c. in ecclesia predicta abjuravit, in idem regnum nunquam rediturus absque speciali licentia, & reconciliatione regis Angliæ; & assignatus est eidem A. pro transitu suo extra regnum predictum Portus de Yarmouth, ^c Cruce in manu sua dextra posita, prout lex Angliæ est & consuetudo. Nothing is expressed in this Judgment but abjuravit regnum, but therein is implied, that all his lands which he had at the time of the felony committed, (and therefore the time of the felony was set down in his confession particularly) ^d at any time after, escheated to the Lords of the fees, & forfeited to the King all his goods which he had at the time of his attainder, ^e the time whereof also was expressed certainly, & his blood corrupted, and other incidents, as in other attainders of felony, only by his voluntary and particular confession. In this case for the offence of felony, he saved his life so long as he kept himself extra regnum, but if he returned, then under this word [abjuravit] is implied *Sus. per collum.* Mich. 1 R. 1. Rot. 1. Bedf. rectit & suspend. See the first part of the Institutes, Sect. 200. fo. 132, 133. and the Second part of the Institutes, W. 1. cap. 20. verbo, [Forejure le Realm.] Artic. Cler. cap. 10 & 15. And the law was so favourable for the preservation of Sanctuary, that if the Felon had been in prison for the felony, and before attainder or conviction ^f had escaped and taken Sanctuary in Church or Church-yard, &c. and the Gaolers or others had pursued him, and brought him again to prison, upon his arraignment he might have pleaded the same, and should have been restored again to the Sanctuary. See more concerning Abjuration, Mic. 9 E. 3. Coram Reg. Rot. 84. extra legem positus, &c. To conclude this Judgment of Abjuration, we take it, that for felony ^g Abjuration is utterly taken away. For abjuration of Recusants and of Hunters in Parks, &c. we have given but a light touch, because they belong not to our treatise of the Pleas of the Crown; nor have we spoken any thing of abjuration in case of Heresy, quia spectat ad aliud forum.

Thus have we spoken of judgments & attainders in cases of high treason upon verdict, confession, or by outlawry; in case of Petit treason upon verdict, confession, or by outlawry; and in case of felony, upon verdict, or confession, or by outlawry, or by abjuration: for none can be attained of Petit treason or felony upon a nihil dicis, or refusal to answer, but in that case the Delinquent is to have his punishment of Peine fort & dure, which next followeth to be handled.

for abjure, in Latine abjurare, 1 E. 3. 17. lib. Intr. Rast. fo. 246. b. pl. 6. g Lib. Int. Rast. 32. b. Sanct. 2. Hil. 43 E. 3. Rot. 115. Buck. William Attewells case. h For all Sanctuaries are taken away by 21 Jac. ca. 28. Note a Sanctuary in the Statute of 1 H. 7. cap. 13. is called a hide or hyde, because it hideth and protecteth the party, &c. Vide Deut. cap. 19. 3. 9. 10. Numb. 35. 13. Joshua 20. 8. Sec. 2. part of the Institutes, Gloc. cap.

Peine fort & dure.

In case of Petit treason or felony, when the offender standeth mute, and refuseth to be tried by the Common law of the land; See Peine forte and dure in the Second part of the Institutes, W. 1. cap. 12. but this holdeth but in case of Petit treason and felony. In case of High treason, upon standing mute, or a nihil dicis, the judgment aforesaid shall be given against him, as if he had been convicted.

And in doing of execution, both in treason and felony, two things are to be observed. First, that it be done by the right Officer, as the Sheriff, or Marshall, for if any other execute the offender, it is felony. Secondly, execution must be made by him that is the right Officer according to the judgment: For example, where the judgment is, that the offender shall be hanged, he cannot behead him, &c. as before is said. Bracton lib. 3. fo. 104. b. Non alio modo puniatur quis, quam se habet condemnatio. P. 20 R. 2. Coram Reg. Rot. 58. Lincoln. Non licet felonem pro feloniam decollari.

ridy above the number of 36. viz. three whole Juries. R. 35 H. 6. 57, 58. Vide li. 9. fo. 124. the Lord

46 E. 3. 53. in A. jell Malloms case. 12 E. 2. Esche. 14. Tr. 21 E. 1. Coram Rege 42. simile. f Hereupon it was called abjuration, because he was sworn to depart the Kingdom. See the Oath. Vet. Mag. Chart. 1. part f. 167, 168. c That he might be known to be an abjured person, and not be let or hindered in his journey: Et Crux fuit signum servate vite per ecclesiam, and is sometimes called vexillum Sanctæ Ecclesiæ. Hil. 26 E. 3. Coram Rege, Rot. 20. d Pl. Com. f. 262. a in Dame Hales case. Register fo. 164. b. Fecit feloniam pro qua regnum nostrum abjuravit. e Stanf. Pl. Cor. 117. E. 6 E. 3. 55. in A. jell Malloms case. 12 E. 2. Esch. 14. 6 E. 2. Forf. Br. 121. 6 H. 4. 6. f Forejure in French is taken Sanct. 2. Hil. 43 E. 3. i First part of the Instit. Sect. 749. verbo Attaine. 2. part of the Instit. W. 1. c. 12. Dier 3 El. 205. a. 13 El. 300. b. See before in the chap. of Treason. See after in the next chapter of Forfeiture, fo. when the party arraigned challengeth peremptorily above the number of 36. viz. three whole Juries. R. 35 H. 6. 57, 58. Vide li. 9. fo. 124. the Lord

Judgment

745

Judgment in case of Petit larceny.

Bracton lib. 3.
fo. 151. b.
Britton fo. 24. a.
Fleta li. 1. ca. 36.
Bracton lib. 3.
fo. 104. b. maketh
mention of pu-
nishment verber-
ibus & virgis.
* 18 Aff. p. 13.
8 E. Cor. 130.
41 E. 3. Cor. 451.

The judgment herein was in ancient time referred to the discretion of the Judge. As in Bractons time, Per fustigationem, & sic castigatus dimittitur. In Brittons time, sometime by the Pillory, sometime by the losse of the ear: and Fleta saith, Est enim furtum de re magna & parva, pro minimo tamen latrocinio 12 denariorum & infra, nullus morti condemnatur; pro hujusmodi modicis delictis inventa fuerunt judicialia Pilloria, & deformitates corporum, ut scissio auricularum.

* But in & since the reign of E. 3. no person lost any member for Petit larceny, but were sometime punished by imprisonment, and sometime by other penance, as whipping, &c. If the Delinquent flyeth for Petit larceny, and so be found by the Jury, he forfeiteth his goods.

Judgment in case of misprision of High Treason.

That the offender by the Common law shall for this concealment forfeit all his goods, and the profits of his lands during his life, and suffer imprisonment during his life. Vide Stanford Pl. Coron. fo. 38. 18 & 2 Mar. cap. 10.

Judgment for striking in Westminster hall, &c. sitting the Courts.

Tr. 4 E. 4. Coram
Rege, Rot. 3
19 E. 3. Judge-
ment 174.
39 Aff. p. 1.
41 Aff. 25.
22 E. 3. 13. a. 41

That the offender shall be imprisoned during his life, forfeit all his lands, tenements, goods and chattels, & quod manus sua dextra amputaretur (apud talem locum:) and this Judgment is given by the Common law. Bracton lib. 3. 104. b. Pœnarum quædam adimunt membrum, & corporis coercionem, sc. imprisonmentem, vel ad tempus, vel imperpetuum. 3 E. 3. 372. *Tr. 4 E. 4. Coram Rege, Rot. 3.*

Judgment for striking and drawing blood in the Kings Court, &c.

The offender shall have his right hand stricken off, be imprisoned during his life, and be fined and ransomed at the Kings will: and this Judgment is given by the statute of 33 H. 8. cap. 12. 33 H. 8. Paine Br. 16.

1 & 2 Ph. & Mar.
ca. 3. obtruncatio
manus dextræ.

We cannot omit to touch by the way an Act made in 1 & 2 Ph. & Mar. intitled, an Act against seditious words and rumours; by a branch of which Act, he that should set forth any book, ryme, ballad, letter or writing containing any false matter, clause or sentence of slander or reproach, and dishonour of the King and Queens Majesty, or either of them, &c. should have his or their right hand stricken off: which Act being but a Probationer at the Parliament in 4 & 5 Ph. & Mar. was continued untill the end of the next Parliament. And by the Act of 1 Eliz. (which was the next Parliament) the said Act of 1 & 2 Ph. & Mar. was enacted to extend to Queen Elizabeth, and to the heirs of her body, Kings and Queens of this Realm; so as by the demise of Queen Eliz. that Act hath lost his force, as it was well worthy, being a dangerous Act, as some had felt in anno 23 Eliz.

1 El. c. 6.

Judgment in a Premunire at the suit of the King.

See the 1. part of
the Instit. §. 159.

44 E. 3. 36.

If the Defendant be in prison, Quod prædictus R. sit extra protectionem domini Regis, & terras, & tenementa, bona & catalla domino Regi forisfaciat, & quod corpus ejus remaneat in prisona ad voluntatem Regis, as in the book of Entries, Rast. Judgment 465: And this Judgment is given by the Statutes of 25 E. 3. ca. 22. 25 E. 3. de Provisoribus, 27 E. 3. ca. 1. 16 R. 2. ca. 5. And if he be not in prison, Quod præd. R. sit extra protectionem domini regis, & terras & tenementa, bona & catalla domino regi forisfaciat, & quod capiatur.

Judgment in case of Theftbote.

5 E. 3. Cor. 353.
19 E. 3. 9.
27 Aff. 69.
41 Aff. pl. 9.
Stanf. fo. 40. b.

That the offender be fined. And it is to be observed that whensoever the Delinquent or Defendant is to be fined, the Judgment is quod capiatur, that is, to be imprisoned untill he doth pay his fine: but when the Defendant is to be amerced, and not fined, then the Defendant is in misericordia, whereof you may

may read at large, Lib. 8. fo. 38, 39, &c. & 59, 60. & 120. Lib. 11. 43, 44.

Pillory.

Pillory is a French word, and it is derived of the French word *Pilastre* a Pillar, columna. Et est lignea columna, in qua collum insertum premitur, and thereupon in law it is called *Collistrigium*, quia in eo collum hominum constringitur. This punishment is very ancient, for the Saxons called it *Healcrauz*, so called for straining the neck. Britton fo. 24. saith, that those that have been adjudged to the Pillory, or *Tumbrel*, are so infamous, Come ilz ne sont receivables al serement faire in juries, enquests, ou en testmoignants; and herewith agreeth *Bracton*. Ver. Mag. Chart. 2 parte, fo. 23, 24, 45.

Saxonice *Heil-sang*, or *Half-sang*; *Hals* collum, *sang* pressio. It is also called an *amerciamment* for commutation of such a punishment.

51 H. 3. *Judicium Collistrigii* &

Pillorii, Ver. N. B. 1. parte, 116, 117. Britton fo. 24. Mirror cap. 4. § De paines en divers manners. Kelway Temps E. 3. 145. b. Fleta li. 2. cap. 8. By the statute of 51 H. 3. & 31 E. 1. Ver. Mag. Chart. 2. parte, fo. 23, 24, 45.

Tumbrell.

Tumbrel is a word in use at this day for a *Dungcart*. *Bracton* calleth it *Tymboralem*.

Infligitur poena corporalis, sc. *pilloralis vel tumberalis cum infamia*, secundum regni statuta. It is called *tumbrellum*, there being no proper Latin word for a *Dungcart*.

Force, Pillor & *Tumbrel* append al View de Franckpledge. And every one that hath a *Let* or *Market*, ought to have a Pillory and *Tumbrell*, &c. to punish offenders, as *Brewers*, *Bakers*, *Foresters*, &c.

Bracton lib. 3. fo. 104. b. 129. b. 151. b. 138. Mirror ubi supra, Temps E. 3. Kelway 139, 140. b. 149. b. 152. Fleta li. 2. ca. 11. §. Item si dñus. Li. Intr. Rast. 494. a. in Quo warr. 7 E. 2. in eodem 260. b.

Trebuchet,

A castigatory, named in the statute of 51 H. 3. signifieth a Cucking-stool, and *Trebuchet* properly is a pitfall or downfall, and in law signifieth a stool, that falleth down into a pit of water, for the punishment of the party in it. And Cuck, or Guck, in the Saxon tongue, signifieth to scould or brawl, (taken from the Cuckhawk, or Cuckhaw, a bird qui odiose jurgat & rixatur) and Inge in that language [water] because the was for her punishment solwed in the water; and others fetch it from *Cucquean*, i. *pellex*.

Now for that the judgement of the Pillory or *Tumbrell* (as it hath appeared before) doth make the Delinquent infamous, and that the rule of law is, *Judicium de majore poena quam quod legibus statutum est non infamum facit*, sed per breve de errore adnullare potest, and again, *poena gravior ultra legem posita estimationem conservat*, that the Justices of Assize, Oier and Terminer, Gaol-delivery, and Justices of Peace, would be well advised before they give judgement of any person to the Pillory or *Tumbrell*, unlesse they have good warrant for their judgement therein; Fine and imprisonment for offences fineable by the Justices abovesaid, is a fair and sure way.

And it is to be observed that those kinds of punishments of Pillory, &c. have been given by Acts of Parliament in cases of enormous and exorbitant offences, as by the statutes of 51 H. 3. 31 E. 1. De pistoriis, &c. 31 E. 1. De forestalariis, 11 H. 7. ca. 4. 33 H. 8. ca. 1. 1 & 2 Ph. & Mar. cap. 10. 2 E. 6. ca. 15. 5 E. 6. ca. 6, & 14. 7 E. 6. ca. 7. El. c. 7. 5 El. ca. 9. 16. 18 El. cap. And therefore the safest way for them, is to follow those Acts of Parliament in cases provided by the same: But of the Court of the Kings Bench, (the highest Court of ordinary Justice) in respect of the multitude of the judicial precedents (which we have seen) we say with the Poet, *Huic nec metas rerum, nec tempora pone*, (for judicial precedents of grave and reverend Judges are good guides to direct men in the right way) we will enumerate some of them.

21 E. 1. Coram Reg. Rot. 2. *Eustachius de Porles Case*, for standing of Justice *Berisford*, imprisonment in the Tower, ad voluntatem regis.

Mich. 33 E. 1. Coram Rege, Rot. 75. *William Brewces case*, for standing, &c. of

Judgements to be given by Justices of Assize, of Oier and Terminer, of Gaol-delivery, of Justices of Peace.

Ver. Mag. Chart. part 2. fo. 24, 25.

Exemplary punishments adjudged in the Kings Bench.

Roger

Roger Hegham Justice. Tr. 3 E. 2. Int. Mem. Scaccarii for standing of Foxeley, a Baron of the Exchequer. Mich. 18 E. 3. coram rege, Rot. 151. for standing of the Justices of the Kings Bench, by a Letter of Tho. Bulroke a Clerk of the same Court. 30 Ass. p. 5. 19. 19 Ass. 1 Pasch. 10 E. 3. Rot. 87. Thom. Twyce Hazarder cōis ludens ad falsos talos adjudicatur quod per sex dies in diversis locis ponatur super collistrigium. Mich. 10 E. 3. Rot. 92. coram rege, Adam de Ravenworth, Mich. 21 E. 3. coram rege, Waiw. Verff. Attornat apparent sine Warranto. Hil. 25 E. 3. coram rege, Rot. 13. versus Robert Hadham Commissionarium pro venditione Bladi in garbis, adjudicatur prisonæ, & quod ab omni officio Domini Regis amoveatur, & finem faciat. Tr. 2 H. 4. coram rege, Rot. 10. Sussex. Mich. 4 & 5 Eliz. coram rege, Hugh Bakers case, for a Libell against certain of the inhabitants of Cherlie, punished by imprisonment, Pillory, and good behaviour, &c.

See the fourth part of the Institutes, Cap. Star Chamber, for punishment by Pillory, &c. for enormous and exorbitant offences, which require more exemplary punishment than an ordinary course of the Laws of the Realm doth inflict. Nobiles magis plectuntur pecunia, plebei vero in corpore; which is observable in all the said statutes. And Bracton saith, Quælibet poena corporalis, quamvis minima, major est qualiter poena pecuniaria. Carcer ad continendos, non ad puniendos haberi debet, &c. Poenæ potius molliendæ quam exasperandæ sunt. Respicendum est iudicanti, ne quid aut durius aut remissius constituat quam causa deposcit; necesse aut severitatis aut clementiæ gloria affectanda est. Aliter puniuntur ex eisdem fractionibus servi quam liberi; & aliter qui quidem aliquid in dominum parentemve commiserit, quam in extraneum; in magistratum, quam in privatum.

Death of a man per infortunium.

Of this mischance there is no expresse judgement to be given, but the offender is to sue out his pardon of course, as it appeareth in the second part of the Institutes, Gloc. cap. 9. And heres Bracton saith, Casu, cum per infortunium, ut si aliquis venando per telum in feram missum hominem interfecerit, & similia perpetraverit, &c. But albeit there be no expresse judgement given upon such a verdict; yet the law giveth a judgement thereupon, viz. that he shall forfeit all his goods and chattells, debts and duties whatsoever, as in the second part of the Institutes, *ubi supra*, it appeareth.

Of death of a man se defendendo.

Upon such a verdict given the Court giveth no expresse judgement, for he is also to be pardoned of course: but the law hath given a judgement, that he shall forfeit all his goods and chattells, debts and duties, as in the second part of the Institutes, *ubi supra*, it appeareth. But the Jury cannot finde that the party killed him generally se defendendo: but they ought to finde the case specially, so as the Court may judge whether in law it be se defendendo, or no. See Stanf. fol. 15.

Of the death of a man that offereth to rob, &c.

If it be found by verdict, that the party indicted or appealed for the death of A, A attempted to have murdered or robbed him in or nigh any common High-way, Cart-way, Horse-way, or Foot-way, or in his mansion or dwelling-house; or for the killing of him which attempteth Burglary to break his dwelling-house in the night; the judgement upon such a verdict shall be, that he shall be acquitted of the death of such a person paying his fees, and he shall forfeit nothing. And so it is declared and enacted by the Statute of 24 H. 8.

And if all the circumstances be proved to the Jury in evidence required by this Act in these cases, the Jury may find a general verdict of not guilty. And where it is rehearsed in the said Act of 24 H. 8. that before that Act it was a question and ambiguity whether still-disposed persons so attempting, or supra, should forfeit their goods and Chattells; the reason of that question and ambiguity was in none

Ancient rules of law in corporall punishments. Bracton lib. 3. fo. 105. a. Ibid.

Ibid.

Matib. cap. 25. Bracton ubi sup.

Judgement implied; or in law. 24 H. 8. cap. 5.

Judgement implied; or in law. See ca. 7. fo. 95. b. 43 Ass. p. 31. Rot. Parl. 3 R. 2. nu. 18. John Imperials case.

23 E. 3. cor. 305. b 3 E. 3. cor. 330. 26 Ass. 23. Exod. 22. Si cfringens vir domum sive suffodiens fuerit inventus, & accepto vulnere mortuus fuerit, percussor non erit reus sanguinis.

e Nota, declared, &c. and so was the common law, as by the Books aforesaid it appeareth. Et per de H. & W. v. Jos. p. 101. 90. 11 80. 82 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Et per de H. & W. v. Jos. p. 101. 90. 11 80. 82 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

none

none of those cases mentioned in that Act, no Robbery, Murder, or Burglary was done, but an attempt onely to do it. But it was no question at the Common law, that if a Robbery, Murder, Burglary, or other felony was done, and pursuit made after the offender, who either by resistance or flight could not be apprehended without killing of him by inevitable necessity, the party so pursuing and killing should not forfeit his goods or chattels; for in those cases every man may arrest the felon by a warrant in law. But there is a diversity between a warrant indeed, and a warrant in law, in this, that if a man be indicted of Murder, Robbery, Burglary, or other felony, and the Sheriffe by virtue of a Capias offer to arrest him, and he resisteth, and fly, ut supra, the Sheriffe may kill him; if otherwise he cannot arrest him, although in truth the party be not guilty, nor any felony done. But in the case of the abovesaid warrant in law, there must be a felony done, and this diversity appeareth in our Books: * and so it is, if after arrest for felony the party arrested resisteth or flyeth, and in pursuit is slain by inevitable necessity, they so killing him forfeit nothing.

An Approver that kills the party accused in battell, or a Champion that killeth the other Champion in a Writ of Right, or the plaintife or defendant in an appeale that killeth the other in duello, according to the Common law, or in combat awarded by the Constable and Marshall in the Court of Chivalry, the party killing shall forfeit nothing; for these combats or duels are such trials as the law appoints in such cases. For, saith Fleta, *Duellum est singularis pugna inter duos ad probandum veritatem litis; & qui vicerit, probasse intelligitur: & quamvis iudicium Dei expectatur ibid.* quicunque tamen monomachiam, i. singularem pugnam, sponte suscepit, aut obtulerit, homicida est, & mortale contrahit peccatum. But before we leave these Champions, it is to be observed that whosoever taketh upon him to be a Champion for another (the forme and oath whereof you may read in the Second part of the Institutes, W. 1. cap. 40. & Glanvil lib. 2. cap. 3.) if he become recreant, that is, a crying Coward or Craven, he shall for his perjury lose liberam legem. Craven is derived of the Greek word κραυνην, a vociferatione: others nearer home, of crying and craving of mercy and forgiveness. And recreantia is derived of the French word recreance, of giving back or cowardize. And sometime it is called creancia per antiphrasin, because he that useth it is not faithfull, but breaketh his oath. And so if the Appellant soyne battell, and cry Craven, he shall also lose liberam legem for the cause aforesaid, but if the Appellee cry Craven, he shall be hanged: * but if they combat untill night come and starres appear, the defendant in the appeal goeth quit, and the plaintife in that case loseth not liberam legem. Amittere liberam legem is to become infamous and of no credit, never to be witness or Juror: for when he is of fame and credit, he is called Liber & legalis homo; and such men ought to be of Juries and Witnesses, because they do enjoy liberam legem. And a Champion ought to be liber homo, and so is the Entry, per corpus liberi hominis. Et quam infamiam victus incurrit, see Glanville lib. 2. cap. 3. & lib. 14. cap. 1. And he further saith, Talis debet Campio petentis esse, qui sit, & esse possit inde testis idoneus. So as no man by the ancient Common law could be a Champion but he that knew the right, and was a witness thereof: and therewith agreeth the statute of VV. 1. cap. 40. wherein observe what the oath was by the Common law: Aliquando patria stat pro campione, & aliquando in bre de recto campio stat pro patria. Campio is derived a campo, because it is publicly stricken in the field, and is called Camp-fight: and is taken in the Common law for one that striketh a legal Camp-fight or Combat in another mans quarrel: in Latin he is called Pugil, a pugna. But the defendant in an appeal that is to combat is not called a Campio, because he fighteth for himself. And these combats in cases whereof the consuance belongs to the Common law, are to be directed by the Judges of the Common law secundum legem & consuetudinem Angliæ, and not by the Constable and Marshall by the Civil law, as all our ancient Authors and Books abovesaid do agree, which also is apparent by the statute of 13 R. 2. ca. 2.

Lib. 9. cap. 1. et lib. 14. cap. 1. 9 H. 4. 3. 17 Aff. 3. 17 E. 3. 2. 9 E. 4. 25. Fleta ubi sup. Lib. Int. Co. fo. 182. 55 H. 3. ubi sup.

22 Aff. p. 55.
22 E. 3. cor. 261.
3 E. 3. Cor. 328.
3 E. 3. ibid. 288,
289, 290.
* See in the Cha.
of Hue and Cry.
4 Rot. par. 3 H. 4.
part. 2. Duellum
percussum.
13 H. 4. 4.
37 H. 6. 20, 21.
See before in the
Chapter of Ap-
prover.
Fleta lib. 1. ca. 32.
b 4 E. 3. 41.
30 E. 3. 20.
29 E. 3. 12.
13 Eliz. Dier 301.
Mirror. cap. 3.
§ Combat, & §
Juramentum du-
elli, & § Ordina-
tio pugnantium.
c Judgment in
law against a Re-
creant and Cra-
ven Champion
is perdere libe-
ram legem.
See a notable
Record hereof
R. pa. 55 H. 3. m. 3.
Glanville li. 2. c. 3.
lib. 14. cap. 1.
d Mirror cap. 3.
§ Ordinatio pug-
nantium, L' horri-
ble mort de Cra-
ven.
e 41 E. 3. cor. 98.
Creans for recre-
ant.
Bract. lib. 3. f. 141.
Brit. fo. 42. 81.
Fleta lib. 1. ca. 32.
19 H. 6. fo. 35.
21 H. 6. 34.
* Mir. c. 3. § ubi su-
f Glanvil lib. 2.
cap. 19. Legem
terra amittentes
perpetua infamie
notam inde merito
incurrunt.
See the first Part
of the Inst. Sect.
514. 27 Aff. 59.
liberam legem
qui, &c.
g 1 H. 6. 6.
3 H. 6. 55.
See the oath in
appeal, Bracton
lib. 3. fo. 141. b.
Britton fo. 42.
Fleta lib. 1. ca. 32.
Glanvil lib. 2. c. 3.

Judgment in an Indictment of Conspiracie; &c. where the party indicted is legitimo modo acquieratus.

4 H. 5. Indict. 220.
Tr. 18 E. 3. com-
ram Rege, Rot.
148. Wilt. judici-
um reddit. cont.
Conspiratores.
Pasch. 32 E. 3.
Rot. 58. Somers.
27 Aff. 59.
24 E. 3. 34.
43 E. 3. 33. b.
Vid. Artic. super
chart. cap. 10.

Nota, the judgment in this case is, as in case of attaint against a Jury, (whereof we shall speak hereafter,) viz. Quod committantur Gaolæ Domini Regis, & quod omnia terræ & tenementa præd. R. & C. capiantur in manum Domini Regis, & devastentur, & extirpentur, & uxores & liberi eorum amoveantur, & omnia bona & catalla eorundem R. & C. forisfaciant Domino Regi, & amodo amittant liberam legem imperpetuum.

Nota in this judgment five severe punishments. 1. That their bodies shall be imprisoned in the common Gaol. 2. Their wives and children moved out of their houses. 3. That all their houses and lands shall be seized into the Kings hands, and the houses wasted and the trees extirpated. 4. All their goods and chattels forfeited to the King. 5. That they forever shall lose the freedom and franchise of the law. That is, first, they shall never be of any Jury or Recog- nitors of Assise. Secondly, nor ever be received for a witness in any case. Third- ly, that they shall never come into any of the Kings Courts, but make Attornies, if they have any thing to do there. And this is called a * villanous judgment, because of the villany and infamy which they deserve against whom it is given; And all is indicted by the Common law, for that the offenders by false conspira- cy under the pretext of law, by indictment of treason or felony and legall proceed- ing thereupon, sought to do the greatest injustice by false conspiracy to shed his blood, who afterwards is thereof legitimo modo acquieratus.

* 24 E. 3. fo. 33.
27 Aff. 53.

But in a Writ of Conspiracy at the suit of the party grieved, the Judgment is, damages to the party, fine to the King, and imprisonment. And the reason thereof is, first, for that when they are indicted at the suit of the King, the judgment is so severe, for that they falsely conspired in the Kings name, and at the Kings suit, by indictment, &c. to do so horrible injustice; therefore at the Kings suit they shall be heavily punished. Secondly, for that as it is said in 15 E. 2. De exilio Hugonis, &c. the law which was instituted for the mainte- nance of peace and of good men, and the punishment of the evil, is turned to the disheritance of the great men, and destruction of the people. Thirdly, for that then judgment at the Kings suit is by the Common law, and the Action of the party is given by statute, which giveth no such punishment: but the party in his action, in respect of the danger of his life, is to recover answerable damages. Of Conspiracy see the Register fol. 134. a & b. & 188. F. N. B. 114, 115, &c. Stanf. pl. cor. fol. 172, 173, 174, 175, &c. and in the new Book of Entries, fol. 109. a precedent of a conspiracy upon an indictment of felony.

4 H. 5. judg. 220.
24 E. 3. 34. 27 aff.
59.

43 E. 3. 33. b.
Tr. 32 E. 1. Rot.
15. Eborum.

Parl. 17 E. 3. nu.
50.

It is enacted, that such as be attainted of Confederacy or Conspiracy, shall have no office of the grant of the King, Queen, or other Noble, neither shall be Sheriffe or Escheator.

Judgment in an Attaint.

Lib. Int. Rastal.
fo. 92. a.
9 E. 4. 51.
4 H. 5. ubi sup.
15 Aff. 2. Kelway
130. b.
Glanvil. lib. 2.
cap. 19.
Bracton lib. 4.
fo. 129.
Brit. fo. 237, 238.
Mirror ca. 3. §. de
attaint.
Flet. lib. 5. ca. 21. Apud Northalverton in Com. Eborum coram Hen. de Guildford & aliis Just. assignatis An. 35 E. 1. attainta. See the first part of the Institutes, Sect. 514. Verb. [en attaint.] Vide Mich. 3 H. 4. Rot. 149. judgment en attaint. Kanc.

1. That the plaintife shall be restored, &c. and the defendant party to the Re- cord, shall be fined, in respect the false verdict was given for him (cui bono) by the Common law.

The judgment against the Petit Jury is, as it is in case of Conspiracy at the suit of the King, as is abovesaid, and in no other but in those two cases that vil- lanous judgment is given. See 8 E. 2. Aff. 396. and 42 E. 3. 26. b. Judgments given in Attaint, & nota bene. 16 E. 3. tit. Judgment, 109. 21 H. 7. 83. Kelway. a good precedent of a judgment given in an attaint. Forreſcus ca. 26. Concern- ing Attaints, see the second part of the Institutes, Marlb. cap. 14. W. 1. cap. 37, &c.

But now by the statute of 23 H. 8. cap. 3. the severity of the punishment is mo- derated,

derated, if the Writ of Attaint be grounded upon that statute: but the party grieved may at his election either bring his Writ of Attaint at the Common law, or upon that statute: but all attaints either at the Common law or upon the statute are to be taken before the King in his Bench, or before the Justices of the Common Pleas, and in no other Courts.

This Act of 23 H. 8. provideth for divers mischiefs which were at the Common law, and giveth to those of the Petty Jury divers pleas which they could not have at the Common law, and hath been well expounded. 7 E. 6. Dier 81.b. Sir John Ailifs case. 3 & 4 Ph. & Mar. 129.b. Heydons case. 3 Eliz. 201. Clovils case. 3 Eliz. 202. Austens case. 7 Eliz. 23. b. Stephens case. See the Record thereof upon the statute of 23 H. 8. for it is an excellent precedent.

And generally of Attaints, see Lib. fo. 111, 112. Lib. 3. fo. 4. Lib. 6. fo. 4. 14, 25, 26, 44, 80. Lib. 8. fo. 60. Lib. 9. fo. 12. Lib. 10. fo. 119. Lib. 11. fo. 6, 43, 62. See also the new Book of Entries, 63, 66, 68, 70, 73, 76, 77, 81, 83, 85, 86, &c.

Judicium de corrupto Judice.

We could not passe over a strange judgement of Suspendatur &c. as in case of felony (which we have touched before in the Chapter of Bribery) given against Sir William Thorpe, lately before Chief Justice of England, which we find of Record in these words. Processus factus An. 24 E. 3. contra Willielmum Thorp chivaler nuper capitalem Justiciarium coram Ricô Comite Arundel, T. de Bello-campo Comite Warw. Willielmo de Clinton Comite de Hunt. Joh. de Gray de Rothersfield Seneschallo hospitii Regis, & Barthol. de Burghers Cameraſ Regis. Pro eo quod idem Willielmus Thorp nuper capitalis Justiciarius Domini Regis ad placita coram ipso Rege tenenda, dum stetit in officio, cepit munera contra juramentum suum, viz. de Richard Saltley 10 li. de Hildebrando Boreward 20 li. de Guilberto Hollyland 40 li. de Tho. Darby Sancti Borulphi & de Roberto Daldersby 10 li. qui pro diversis felonis, falsitatibus, & transgressionibus coram ipso Willielmo in sessione sua apud Lincolne Anno 23. fuerunt indictati, & per ipsum Willielmum bre de exigendo vers. eos respect fuit; quæ omnia & singula deducere non potuit: ideo adjudicatum fuit prout sequitur. viz. Consideratum est per dictos Justiciarios assignatos ad judicandum^a secundum voluntatem Domini Regis, & secundum regale posse suum, quod quia prædictus Willielmus de Thorpe Sacramentum Domini Regis quod erga populum habuit custodiendum fregit^b maliciose, false, & rebelliter in quantum in ipso fuit, & ex causis supradictis per ipsum Willielmum, ut prædictum est, expresse cognitis, suspendatur. Et quod omnia terræ & tenementa, bona & catalla sua Domino Regi remaneant forisfacta. Et postea Dominus Rex mandavit bre suum sub privato sigillo, all in French, and there entred de verbo in verbum. Ideo consideratum est quod executio Judicii prædicti de suspensione ejusdem Willielmi omnino cesseret & ei pardonetur. Et quod idem Willielmus remittatur prisonæ Turris prædictæ ad gratiam Domini Regis expectandam, &c. Et non est intentio Domini Regis quod hujusmodi judicium in consimili casu versus quemcunque alium ex quacunque causa se teneat vel extendat, sed solummodo versus eos qui prædictum^d Sacramentum fecerunt, & fregerunt, & habent leges regales Angliæ ad custodiend^e.

We have also found, that at a Parliament holden at Westminster in Octabis Purificationis beate Marie, Anno 25 E. 3. holden before Lionel Duke of Clarence by force of the Kings Commission, &c. Commandement was given, that the Record of the said Judgement against the said Sir William Thorpe should be brought into the Parliament, and there to be openly read before the Nobles of the Parliament to hear every of their advices; which was done accordingly, and there the Nobles affirmed the judgement.

And these words in the said judgement, Ad judicandum secundum voluntatem Domini Regis, & secundum regale posse suum, and that his lands should be forfeit to the King, & prædict. Sacramentum, were grounded upon the oath of the Kings Justices in Anno 18 E. 3. the conclusion of which Oath is, [upon pain to be at the Kings will, body, lands and goods, thereof to be done as pleaseth him.]

Ror. par. Anno 24 E. 3. part. 3. m. 2. in dorf. & Ror. par. Anno 25 E. 3. part. 1. m. 17.

In toto 80 li.

^a The effect of the words of the oath hereafter mentioned.

^b Nota, here is neither felonice nor proditorie in this Indictment, but rebelliter.

^c According to the said oath, for otherwise the King had no colour to have the forfeiture of all his lands for felony, but every Lord of whom they were respectively holden, &c.

^d Nota, prædictum sacramentum, e. Ror. Parl. in Oct. Pur. An. 25 E. 3. nu. 10.

We desirous to satisfie our self herein, searched for the Record of this oath: and albeit there is a Parliament Roll of this Parliament, and other Acts, then passed by Authority of Parliament, be entred into the said Roll, yet this is not; for that it had not the warrant of an Act of Parliament. It ought to have been printed amongst the statutes of the Realm, and the title of them is, Here followeth the oath of the Justices made in the same eighteenth year, but saith not at the Parliament, &c. but after it came to be printed: and that which is printed in anno 10 E. 3. ca. 1. is but a recitall made by the King alone, and no Act of Parliament; for it appeareth by that which precedeth, and by the oath it self, that it was the Act onely and commandement of the King, for it beginneth, First, we have commanded all our Justices, &c. which former part was but a recital of some precedent Act: and then followeth, We have ordained and caused our said Justices to be sworn, &c. so as the oath was devised by the King, and the Justices sworn before this Parliament. Lastly, it is there said and concludeth, And for this cause we have encreased the fees of our said Justices, &c. which the King of himself did before this Act also.

And we have an ancient Manuscript of the Acts of Parliament in Anno 18 E. 3. and the oath is not within it.

And it appeareth by Fleta, that the punishment of a corrupt Judge, that receiveth gift or reward, was, Si inde convictus fuerit, quod imperpetuum a concilio regis excludatur; terrasque, res, redditus, & proventus bonorum suorum amittat per unum annum: qui si proventus non habuerit, puniatur per discretionem regni & consiliariorum regis. And that which Fleta calleth Sacramentum Justic', in Vet. Magna Charta is named Juramentum consiliariorum regis: for the Judges of England are of the Kings Counsell (as elsewhere hath appeared) for, in, and concerning the laws of the Realm, in which oath also the said fatall clause is omitted.

See the Mirror cap. 4. §. de faux Judges, & ca. 5. §. 1. of the law in the time of King Alfred, how many Justices were in one year hanged, as homicides, for their false judgements: but that law hath been long since delete and antiquated, and yet may serve for a memorial of the time past.

The offence of Bribery was punished by fine, and ransom, and losse in the reign of E. 1. as in the Chapter of Extortion and Bribery before appears: only Sir Thomas Weyland Chief Justice of the Common Pleas took Sanctuary, and before a Cozoner confessed himself guilty of murder, and according to the course of the Common law absured the Realm, so as indeed he was attainted of felony, (which case hath been vehemently urged) but it was not for bribery, but for murder, as any other man might have been.

But to winde up the thread of this discourse with three Acts of Parliament. First, with the statute of 8 R. 2. wherein it is recited, that whereas in the time of King E. 3. it was ordained, that Justices as long as they should be in office, should not take gift or reward, and so forth, as in Veteri Magna Charta, (without the said fatall clause) That Act provideth, that the oath without that fatall clause, should extend as well to the Barons of the Exchequer as to the Justices, and expressed the penalty of all to be (according to the Common law) viz. losse of office, fine and ransom. But at the next Parliament, viz. 9 R. 2. the said Act of 8 R. 2. for that it was very hard, and needed declaration, was made of no force till it be declared in Parliament. Afterwards at the Parliament holden 11 H. 4. it was debated what punishment great Officers there named, Counsellors of the King, and Judges, &c. should have, which should take any gift, reward or brocage for doing of their offices or services: in the end it was declared and enacted by Authority of Parliament, in these words following. Item que nul Chancellor, Treasorer, Gardien del Privy Seal, Counsellier du Roy, Servientes a Counsell du Roy, ne nul autre Officer, * Juge ne minister du Roy peinent fees ou gages de Roy pur lour dites offices ou service, preigne en nul maniere en temps avenir aucun maniere de done ou brocage de nulluy pur lour ditz offices & services affaire, sur peine de 1 responder a Roy de la tieble de ceo que

Fleta li. 1. ca. 17.
§. Cum igitur
non fit, &c.

Vet. Mag. Chart.
1. parte fo. 165.
Vide Brañ. li. 3.
fo. 109. Sacra-
ment' Justic' ite-
ner', and that
then was the ef-
fect de sacramet
Justic. residen-
tium.
Vid. Flet. l. 2. c. 7.
§. Item atrox est
injuria, &c.

8 R. 2. ca. 3.
Vide Vet. Mag.
Chart. fo. 165. a.
ubi supra.
9 R. 2. cap. 1.
a In respect of
the recitall.
b Ro. Pet. 11 H. 4.
nu. 28. not here-
tofore printed.
Vid. 1 H. 4. nu. 99.
* Nota.
c This is agreea-
ble to the law of
God, Deut. 16. 19.
Non accipies per-
sonam, nec mune-
ra, quia munera
excæcant oculos
sapientum, & mu-
tant verba iusto-
rum.
Exodus 23. 8.

que issi preignent, 2 & de satisfaire la party, 3 & puis al volunt le roy, & 4 soit discharges de son office, service, & counsell pur tous jours; & que chescun que verra pursuer en la dit matier eie la sute cibien pur le Roy come pur lui meisme, & eie la tierce part del summe de que la partie soit duement conuict. *Respons.* Le Roy le voet.

* This Act being by Authority of Parliament, hath limited the punishment (amongst others) of corrupt Judges, of whom now we entreat, so as the former example of Sir William Thorp is not now to be followed, which we asseverme not in favour of sozbid bribery, (which we hate, as in the proper Chapter there, of before appeareth) but in advancement of Justice and right, which is the end of our labour in this and other of our works; and therefore have caused that good Act that hath lived so long in obscurity, for the better notice and observation thereof, to be put to the presse, which never was yet printed; and the cause thereof was, for that in the Argent of the Parliament Roll of this Act, it is witten, *Reservatur per dominum Principem & Concilium*: A strange presumption, without warrant of the King his Father and of the Parliament, to cause such a reservatur to be made to an Act of Parliament.

The like he did to another Act in the same Parliament, nu. 63. concerning Attorneys, the like whereof was never done in any former or latter Parliaments. * This was that Prince Henry, who keeping ill company, and led by ill Counsell, about this time assaulted (some say) and stroke Gascoign Chief Justice sitting in the Kings Bench, for that the Prince endeavouring with strong hand to receive a prisoner, one of his unchristy minions indicted and arraigned at the Kings Bench Bar for felony, was prevented of his purpose by the perswasion and commandement of the Chief Justice; for which the Chief Justice committed the Prince to the Kings Bench, whereof some of his followers instantly complained to the King his Father: who informing himself of the true state of the case, gave God infinite thanks, that he had given him such a Judge as feared not to minister justice, and such a Son as could suffer seembly and obey justice. And this is that Prince, who abandoning his former company and counsell, and following the advice of grave, wise and expert men, whom he made choice of to be of his Counsell, became a victorious and virtuous King, and prosperous in all that he took in hand, at home and abroad.

For the duty of Judges, it is truly said (as before hath been said) that *Judex debet habere duos sales*, viz. *salem scientia*, ne sit insipidus, & *salem conscientia*, ne sit diabolus. And what persons should be Judges, see Bracton lib. 1. cap. 2. & lib. 3. fol. 106. & Fleta lib. 1. cap. 17. §. caveat, and the Mirror ca. 2. §. 2. de Judges, & Rot. Parl. 17 E. 3. nu. 3. 10.

To these we will add, that upon the conclusion of a marriage then to be had between Philip the son of the Emperour, and Prince of Spain, it was nobly and wisely provided by the Queen, the Lords Spirituall and Temporall, and the Commons by authority of Parliament (amongst many other excellent provisions worthy of observation) that the said Prince should not promote, admit or receive to any office, administration or benefice in the Realm of England, and the Dominions thereunto belonging, any stranger, or persons not born under the dominion and subjection of the most noble Queen of England: and that the said most noble Prince should do nothing whereby any thing might be innovated in the state or right, either publick or private, or in the laws & customes of England, or the Dominions thereunto belonging, but shall contrariwise confirm and keep, to all estates and orders, their rights and privileges.

And it is there further provided for the future, &c. that if the said Prince should have issue male or female, the order of succession is there declared, but with this proviso; Provided nevertheless, and expressly reserved in all and singular the above-declared cases of succession, that whatsoever he or she be that shall succeed in them, they shall leave to every of the said Realms, Lands and Dominions whole and entire their privileges, rights and customes, and the same Realms and Dominions shall administer and cause to be administered by

Nota Four punishments.

1. By the Court of Justice where the matter shall depend (as hath been often observed) by fine and imprisonment.

2. In the oath of the Justices in Wales, that fearful clause is omitted, neither is it in the oath of the Barons of the Exchequer of England.

3. Veritas nihil veretur nisi abscondi.

* See Sir Tho. Eliot in his Governour, &c. Hol. Chron. 543. a.

Anno 1 Mar. Stat. 2. ca. 2. in print. See the Articles of Concord, 21. Maii Anno Domini 1420. & Anno 8 H. 5. between King H. 5. and Charles the French King, whereby the Crown of France after the death of the said Charles was established to H. 5. and his heirs. Artic. 7, 8, &c.

by the naturall bozn of the said Realms, Dominions and Lands.

By this, Philip (after King of Spain) could not prefer any stranger bozn to any office of Iudicature, &c. within the Realm of England, or Dominions of the same, nor all the time he was within this Realm did he eter attempt the same.

Vide Camden.
El. 322. Artic.
inter reginam
Eliz. & Franciscum
Ducē Alan-
son anno 23 El.
Populo superim-
portune ut nubere
suaudent in
comitis.
44 Ja. Regis c. 1.
about the midst.
* That case being
then in question.

And in the Articles, De matrimonio prolucuto inter Reginam Elizabetham & ducem de Alanson, amongst others it was expressly provided, Quod dux nullum extraneum ad aliquod officium in Anglia promovebit, & nihil in jure mutabit, &c.

Also King James wisely provided by Authority of Parliament, by the advice of the Lords Spirituall and Tempozall, and Commons in that Parliament assembled, that whereas in regard of some difference and unequality of the lawes, trials and proceedings * in case of life, between the Justice of the Realm of England and that of the Realm of Scotland, it appeareth to be most convenient for the contentment and satisfaction of all his Majesties Subjects to proceed (with all possible severity) against such offenders in their own Country according to the lawes of the same, whereunto they are bozn and inheritable; and by and before the naturall bozn Subjects of the same Realm, if they be there apprehended. And by the next clause it is provided, that felonies committed by Englishmen in Scotland shall be enquired of, heard and determined before Justices of Assise, or Commissioners of Oier and Terminer and Gaol-delivery, being naturall bozn Subjects within the Realm of England, and none other. And the like in another clause, with an addition of Justices of Peace to be naturall bozn Subjects within England: and God blessed and prospered this Act with happy and desired successe.

Matth. Par pag.
363, 380, 383, &c.
Hol. Chron. pag.
231. 1071. a. b.

But contraritwise, Petrus de Rupibus, or of the Rocks, being a Gascoign bozn, preferred to be Bishop of Winchester by King John, and being a principall Counsellor about King H. 3. both in his young years, did after in his riper age prefer to offices about the King such Gascoigns as were of his blood or alliance, (whereof one of his kindred, some say his son, Peter de Orival, Treasurer of England) to the great grief and discontentment of the Nobility of England to have a Gascoign bozn in place above them. And what heavy event ensued thereupon, let Historians inform you, for it is grievous to me to remember it.

Vide 50 E. 3.
nu. 165.
for the keeping
of the castle of
Nottingham.
Vide 18 E. 1.
Rot. Parl. nu.
Solomon de
Rolfes case.

If you desire to see somewhat concerning Ecclesiastical offices, promotions and benefices; first what petitions have been made in Parliament against Aliens or Strangers, look in the Parliament Rolls of 50 E. 3. nu. 96, 97, 120. 13 E. 3. nu. 23. 17 E. 3. nu. 59, 60. 18 E. 3. nu. 38. 2 R. 2. nu. 6 H. 4. nu. 48. 4 H. 6. nu. 29, &c. And what lawes have been made that Aliens or Strangers should not be advanced to the same; Vide 35 E. 1. Statut. de Carlisle. 3 R. 2. ca. 3. 7 R. 2. ca. 12. Rot. Parl. 13 R. 2. not in print. 1 H. 5. ca. 7. 4 & 5 Ph. & Mar. cap. 6.

CAP.

CAP. CII.

Forfeiture, Confiscation, &c.

NOta, confiscare & forisfacere are Synonyma, and bona confiscata are bona forisfacta. Fiscus properly signifieth a Panier or Hamper of Officers, wherein the Romanes kept their treasure, and by the figure of Metonymia continentis pro contento, it is taken for the treasure it self, unde confiscare, and bona confiscata; and thereupon it is said, Quod non capit Christus, capit Fiscus.

Of forfeiture of lands and tenements, and other hereditaments for high treason, petit treason, felony, misprision of treason, premunire, and in some cases of misprision, * and what hereditaments which be not holden shall be forfeited for high treason, and shall not escheat for Petit treason or Felony, we have spoken before in their severall chapters, &c. now let us speak of forfeiture of goods and chattels in these and some other cases.

^a Of these the forfeiture of some of them must appear or be found of Record, and therefore these cannot be claimed by prescription; of other some the forfeiture need not appear or be found of Record, and therefore these may be gained by prescription.

^b Of the former sort be bona & catalla proditorum, felonum, uelagar, in exigendis, positorum, fugitivorum, deodand, annus, dies, & vastum, &c. and all other forfeitures which must appear or be found of Record.

Of the latter sort be Treasure trove, bona, & catalla waviar, extrahur, wreccum maris, &c.

^c If a Traitor or Felon either rescue himself, or will not submit him to be arrested, but resisteth, and in resistance is slain; upon presentment hereof he forfeiteth all his goods and chattels.

^d If a Felon in pursuit wade his own goods, they are forfeited, yet are they not bona waviata.

If in appeale of robbery the Plaintiff omit any of the goods stolen, they are forfeit to the King for the favour which the law presumeth the Plaintiff beareth to the Felon: and for that he cannot have restitution for more then is in his appeal.

In appeal of robbery of goods, if the Jury find that the Defendant found them in the high way, in this case the Plaintiff for his false appeal in seeking the blood of the innocent, shall forfeit his goods to the King.

If one arraigned for treason or petit treason, challengeth peremptorily above thirty five, he forfeiteth his goods, and judgment of Pain fort & dure shall be given against him, as one that refuseth the triall of law, by challenging three full Juries, and like unto one that standeth mute and will not put himself upon the triall of the law.

By the Statute of 22 H. 8. it was provided that no person arraigned for any petit treason, murder or felony, shall be admitted to any peremptory challenge above the number of twenty: but at this day in case of high treason, notwithstanding the Statute of 33 H. 8. cap. 22, 23, and petit treason, notwithstanding the Act of 22 H. 8. he may challenge thirty five according to the Common law, for it is enacted by the Statute of 1 & 2 Ph. & Mar. cap. 10. that all trials hereafter to be awarded, or made for any treason, shall be had and used only according to the due order and course of the Common law, so as to Petit treason the Act of 22 H. 8. is abrogated: but in cases of murder and felony he cannot challenge peremptorily above the number of twenty; and if he challenge above twenty,

For the derivation of forisfacere, See the First part of the Institutes, Sect. 74. fol. 59. a. 3 E. 3. forfeit. 24.

* See before cap. High Treason, Verbo [De tr'es & tenements, &c.] fol. 18 & 19.

Et cap. de Petit treason, Verb.

[Et de tiel manner de treason, &c.] fo. 21.

^a See the 1. part of the Institutes, of both these branches.

^b See the 1. part of the Institutes, ubi supra, both the former and latter sort.

^c 3 E. 3. Cor. 290, 312.

^d 29 E. 3. 29. 45 E. 3. Cor. 100.

3 E. 2. Cor. 367, 368.

3 H. 7. 12.

22 H. 8. c. 14.

32 H. 8. ca. 3.

See before Peine

fort & dure in

the next preceding

Chapter.

See before in the

Chapter of Petit

treason, fo. 26.

B. L. 155. f. 7.
P. low. low
262. f.

ty, and under thirty six, he forfeiteth not his goods and chattells, for no law gi-
veth forfeiture for challenging above twenty; but the Court ought to overrule
the challenge: neither is he convicted by the challenging above twenty, as he
was by the Common law by challenge of three Juries, for the Act of 22 H.8. ex-
tendeth not to any conviction, but to the challenge onely.

§ E.2. Forfeit. 17.
23 E. contumac.
17.7 H. 6. 9.
26 H.6. Attach-
ment 4.
28 H. 6. 9.
34 H. 6. 29, 49.
32 H. 6. Ibidem.
9 H. 7. 6. Broke
Tit. forfeit. 4.
3 El. Dier 199.
pag. 54.
1. part of the
Institutes, §. 745.

If the party Defendant be attached or distrained by process out of any Court
of Record, County, by force of a Justices, &c. hundred Court, or other Court
Baron, and make default, the goods or issues are forfeited, and upon the at-
tachment the Sheriffe or other Officer may take the goods with them: and
this is the reason that upon the attachment the Sheriff or other Officer ought
to return the certainty of the goods, and the value, and it is not sufficient to
return that he hath attached or distrained the Defendant by goods to such a va-
lue, and so upon the distress the issues must be returned in certain, because
they are upon default to be forfeited.

What a person convict of Felony before attainder shall forfeit, see the
First part of the Institutes, Sect. 745. Verb. Attainr, fo. 391.

See Supra in the Chapter of Wreobands, and in the Chapter of Wreck. Vid.
Stanford Pl. Cor. fo. 183, 184, &c.

C A P. CIII.

Of the seizure of goods, &c. for offences, &c. before conviction.

Vide 25 E. 3.
ca. 14.

Regularly the goods, &c. of any Delinquent cannot be taken and seized
to the Kings use, before the same be forfeited.

The same cannot be inventoried, and the Town charged therewith,
before the owner be indicted of Record.

It is to be observed, that there are two manners of seizures, one verball with-
out taking, removing, or carrying away, onely to make an Inventory, and to
charge the Town; and the other an actual seizure and taking away the
same.

26 Aff. p. 32.
43 E. 3. fo. 24.
44 Aff. p. 14.
7 H. 4. fo. ultimo.
Lib. 8. fo. 171.
See the 1. part of
the Institutes,
Sect. 745. f. 391. a.
Bract. lib. 3. f. 123.
Britt. fo. 4. b.
Fleta l. i. c. 25, 26.
a Nota the gene-
rality of these
words.

Hil. 29 E. 1. Co-
ram Rege in Aff.
Campions case.
b In this word
treason is com-
prehended.

c Nota, Mort del
home est feloniam
magna.

d Note this rea-
son extends as well to treason as to felony. e This writ is in the Regist. f That is, by Magna Chart. cap. 29. and that
Act extends to treason as well as to felony. § E. 3. cap. 9. Fleta lib. 2. c. 26. accord. g Id est, indictatus, for before
Indictment no verball seizure can be made, or Inventory taken. Stat. de 4 E. 1. de offic. Coronatoris, & aliquis cul-
pabilis invenitur, &c. Britton f. 4. b. accord. h So was it in Bractons time, but afterwards the Township was char-
ged, and answerable for the same. Britton fo. 18. Mirror c. 2. §. 13. Fleta lib. 1. c. 25, 26. 43 E. 3. 18. a.

As to the first, the same is manifest by Bracton and all our ancient Authors:
and let Bracton speak for them all.

Prisones imprisonati, antequam convicti fuerint, de terris suis disseisiri non
debent, nec de rebus suis quibuscunque spoliari; sed dum fuerint in pri-
sona debent de proprio in omnibus sustentari, donec per judicium deliberati
fuerint vel condemnati, &c. And fo. 136. he saith thus, Qui pro crimine vel fe-
lonia magna, sicut pro morte hominis, captus fuerit & imprisonatus, vel
sub custodia detentus, non debet spoliari bonis suis, nec de terris suis disseisiri, sed
debet inde sustentari donec de crimine sibi imposito se defenderit, vel convictus
fuerit, quia ante convictionem nihil forisfacit; & si quis contra hoc fecerit, fiat
Vicecom' tale bre. Rex vic' salutem. Scias quod provisum est in curia nostra co-
ram nobis, quod nullus homo captus pro morte hominis, vel pro alia feloniam pro
qua debeat imprisonari, disseisietur de terris, tenementis vel catallis suis, quo-
usque convictus fuerit de feloniam de qua rectatus est, sed quam cito captus
fuerit per visum custodum placitorum coronar nostrar, & per visum tuum & le-
galium hominum, apprecientur catalla ipsius capti, & imbreventur, & salvo
custodiantur per balivos ipsius qui capitur, & qui bonam inveniant securita-

tem de respondendo coram Justiciariis nostris cum ab eis exigantur: salvo tamen eidem capto & familiæ suæ necessariis, quandiu fuerit in prisona, rationabili estovorio suo, &c. 1. rationabili victu & vestitu. 3 E.3. Coron. 336. 13 H.4.13.

By the statute of 1 R.3. cap. 3. it is enacted and declared, That neither Sheriff, Escheator, Bailiffe of Franchise, nor other person take or seize the goods of any person arrested or imprisoned, before he be convicted or attainted of the felony, according to the law of England, or before the goods be otherwise lawfully forfeited, upon pain to forfeit double the value of the goods so taken to the party grieved.

So as (super tota materia) these two conclusions are manifestly proved. First, that before Indictment, the goods or other things of any offender cannot be searched, inventoried, or in any sort seized; nor after indictment seized, and removed or taken away, before conviction or Attainder. Secondly, that the begging of the goods or estate of any Delinquent accused or indicted of any treason, felony, or other offence before he be convicted and attainted, is utterly unlawful, because before conviction and attainder, as hath been said, nothing is forfeited to the King, nor grantable by him. And besides, it either maketh the prosecution against the Delinquent more precipitate, violent and undue; then the quiet and equall proceeding of Law and Justice would permit; or else by some underhand composition and agreement, stops or hinders the due course of Justice, for exemplary punishment of the offender. And lastly, when the Delinquent is begged, it discourageth both Judge, Jury, and witness to do their duty.

It was an Article of Inquiry, De his qui aliquid agunt per quod veritas & justitia suffocantur.

See Lib. 7. f. 36, & 37. the case of penall statutes, & nota bene: See also the statute of 21 Jac. ca. 3. a fortiori in case of life. Placitum coronæ ought not to become in effect placitum privarum. And if it fall out that the party accused be legitimo modo acquietatus, let such as begge him and prosecute against him be terrified by the villanous judgement against Conspirators, which you may read before cap. Judgements and Execution.

a Note the generality of these words.

b Mic. 18 E.1. Coram Rege, Ro. 34. Norff. Nisi quis appellatus indistatus vel cum manu opere captus fuerit, non competit regi secta contra ipsum.

Begging of lands and goods before conviction, &c. unlawfull.

Cap. Itineris.

Hh

CAP.

CAP. CIV.

Of Falsifying of Attainders.

Syers case, Anno
32 Eliz.

At the Assizes in
Lent, 32 Eliz. in
Com. Norff.

Nota, The reso-
lution of all the
Judges.

AT Twelve Sessions of the Peace holden at Norwich for the County of Norfolk, Anno 32 Eliz. one Syer was indicted of Burglary, supposed to be committed 1 Augusti Anno 31 Eliz. whereunto Syer pleaded not guilty. And upon the evidence it appeared that the burglary was committed 1 Septemb. Anno 31 Eliz. so as at the time alledged in the Indictment there was no burglary done: and it was conceived that the very true day in the Indictment was necessary to be set down in the Indictment, for that the judgement doth relate to the day in the Indictment, and so avoid Feoffments, Leases, &c. for that (as it was also conceived) the Feoffment, Lease, &c. when the attainder is upon a verdict, should not falsifie in the time of the felony: and thereupon the Jury found Syer not guilty. And at the same Sessions Syer was again indicted for the same burglary done 1 Septembris Anno 31 Eliz. when in truth it was done. And he that gave the charge at that Sessions doubted, whether upon this matter Syer might plead Autre foiz acquite for the same burglary, (for seeing the offender is allowed no counsel, the Court ought to do him justice, and assigne him counsel in favorem vice, though he demand it not, to plead any matter in Law appearing to the Court for his discharge;) and thereupon he stayed the proceeding against him, and the Assizes being at hand, he acquainted the Justices of Assize, Wray Chief Justice, and Justice Periam, with this case, and with the doubts conceived thereupon: who answered him, that the like case had then been lately propounded by Justice Periam to all the Justices of England, and by them three points were resolved. 1. That the Crown was not bound to set down the very day when the treason, felony, &c. was done, but the day set down in the Indictment being before or after the offence done, the Jury ought to finde him guilty, if the truth of the case be so; and if it be alledged before the offence done, to finde the day when it was done in rei veritate, for they are sworn ad veritatem dicendam, and then the forfeiture shall relate but to the day in the verdict, which was the day of the offence done, and not to the day in the Indictment. 2. That if the triers finde the offender guilty generally, yet the Feoffment or Lease, &c. if the offence be alledged in the Indictment before it was done to their prejudice, may falsifie in the time, but not for the offence. For seeing the Crown is not bound to set down the very just day when the treason or felony, &c. is done, and that the Triers have chief regard and respect of the offence it selfe, God forbid but that the Subject might falsifie as concerning the time of the offence. 3. If the offender be found not guilty, he in that case might plead upon a new Indictment, Autre foiz acquite: and so Syer in the case aforesaid did, and was thereupon discharged according to the said resolutions. Nota three notable points resolved, that never were resolved in any Book that we have read and remember.

If a man insoffeth another of his Land, and after is indicted of a felony supposed to be committed before the feoffment, and thereupon he is outlawed; the party himselfe is bound hereby, and cannot traverse the felony, but the Feoffment, &c. may, because he is an estranger thereunto: for a false indictment without any triall by verdict shall not binde the Feoffment, &c. but that he may falsifie, either by traverse of the felony it selfe, or of the time of the Feoffment.

And



And so it is if a man maketh a feoffment of his land, and after taketh Sandu-
ary, and confesseth the felony before the Coroner by him to be done before the fe-
offment, and abjureth the Realm; the feoffee shall falsifie the attainder by tra-
versing of the felony. And so it is if a man be indicted of felony, and is attained
by his own confession, the feoffee shall falsifie the attainder by denying the felo-
ny. But otherwise it is if he be attained upon a verdict given by twelve men, for
then the feoffee shall not falsifie by traversing of the offence, but of the time only.

Where the case in effect is, that 19 Januarii Anno 1 Maria, a Commission
of Oier and Terminer in London was directed to Sir Thomas VWhite the
Lord Mayor of London, and to divers others, reciting, that where Sir Robert
Dudley Knight, 9 Januarii Anno 1 Maria, was indicted of High Treason before
Thomas Duke of Norfolk. and 14 others Commissioners of Oier and Terminer in
the County of Norfolk. (where in truth that Commission was directed to so many,
but the indictment was taken but before 8 of them only) granting to them 02
any 4 of them authority to receive the indictment taken before 15 Commis-
sioners, and to proceed thereupon as special Justices of Oier and Terminer, &c. by
pretext whereof they proceeded, and upon the confession of the said Sir Robert
Dudley, gave judgement against him in case of High Treason. In this case it
was adjudged, that Sir Robert Dudley, then Earl of Leic. might falsifie the said
attainder by plea, because it was void, and Coram non iudice; for that the said
latter Commissioners had no power to proceed upon an Indictment taken be-
fore 8, but before 15, and so the judgement was void, and coram non iudice:
for whereforever the judgement is void, or coram non iudice, the party is not dri-
ven to his Writ of Error, but may falsifie the attainder by plea, shewing the
special matter which probeth it void, or coram non iudice. In which case the
party forfeiteth neither lands nor goods. By which case it appeareth how necessa-
ry it is for Judges, especially in cases of Treason and Felony, to look into the
whole Record, and the proceedings thereupon, before they give judgement, lest
they give an unlawfull and unjust judgement, by means whereof the party may
lose his life, &c.

A and B were indicted, A as principal of felony, and B as accessory for re-
ceiving him. A fled and was attained of the felony by outlawry. B the accessory
(being seised of lands in fee holden of C) was arraigned upon the indictment, and
found guilty by verdict, and had judgement, and was hanged. C the Lord en-
treth as Lord by Escheat. A the principal reverseth the Outlawry, and to the
felony pleaded not guilty, and by verdict was found not guilty, and thereupon
was by judgement acquitted. The heir of B brought an Assise of Mortdances
against C the Lord by Escheat, who pleaded the outlawry of the principal, and
the attainder of the accessory, his seisin in fee, and the execution, and his entry
as Lord by Escheat. The plaintiff shewed the reversal of the outlawry by the
principal, and his acquittal by verdict and judgement: whereupon the Lord de-
murred in judgement. And it was adjudged that the plaintiff in the Writ of
Mortdances should recover against the Lord by Escheat. Upon which judge-
ment we observe these five conclusions. 1. That the attainder of the accessory
hath a kind of dependency upon the attainder of the principal. For it is a
Maxime in Law, That the accessory ought not to be put to answer before the
principal be attained; and by the reversal and acquittal of the principal, the
dependent judgement against the accessory cannot stand. 2. That this attain-
der of the accessory may be falsified and avoided by the Heir by plea, and is not
driven to his Writ of Error; for that the attainder of the accessory is by matter
in law avoided by Record of as high nature as the attainder of the principal
was. For in this case it is impossible that there should be an accessory where
there was no principal, of the same felony. 3. That the Escheat of the land
lawfully once vested shall by this matter *ex post facto* be divested. 4. Though
there were no immediate descent to the Heir, yet upon the judgement of the
acquittal of the principal the Writ of Mortdances was maintainable. Lastly,
that albeit the attainder of the accessory is avoided by judgement of law, yet the

h 2

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11 H. 4. 49.
2 H. 5. Eschop. 91.
7 E. 4. 1. 2.
Vid. Rot. Parl.
23 H. 6. nu. 32.

Pl. com. f. 390.
Le Counce de
Leic. case.

4 Tri. 3 El.
b V. for this point
22 Ass. p. 64.
39 E. 3. 33, 34.
41 Ass. p. ult.
27 Ass. p. 55.
39 Ass. p. 6.
7 H. 4. 3. 9 H. 4. 1.
10 H. 6. 13.
36 H. 6. 32.
31 H. 6. 10.
4 H. 6. 24.
22 E. 4. 31. Co-
lyns case.
2 H. 3. 10.
4 H. 7. 18.
2 H. 7. fe.
Vide Rot. Parl.
18 E. 1. Rot. 11.
Mountgom. Bo-
go de Knovil, &c.
c See this case
temps E. 1. tit.
Mordanc. 46. but
not fully there
reported.
Vid. lib. 9. fo. 119.
Lord Zanchers
case.
d Where the an-
cestor of the acces-
sory was lawfully
and in due form
attainted of felo-
ny, and yet the
heire shall inherit
by matter *ex
post facto*.
e V. li. 5. fo. 119. b.
Lo. Zanchers case;
Debili funda-
mento fallit opus.
2 R. 3. fo. 12.
f 26 E. 3. 57.
7 H. 6. 44.
43 E. 3. 3.
4 E. 3. 36.
11 H. 4. 4. 6.
9 H. 6. 38. b.
8 H. 4. 4.
10 H. 6. 6.
6 E. 4. 8.
8 H. 7. 10.
13 E. 4. 4.

18 E. 4. 9. b.

Dier 20 Eliz. 135.
lib. 6. fo. 13, 14. in
Arundels case.

Lord by Escheat remains tenant of the land, untill it be evicted from him by action or entry. And so it is if the principal be attainted of felony, and after the accessory is also attainted, if the principal reverseth his attainder by writ of Error, the attainder of the accessory dependant thereupon is reversed.

A man commits treason or felony, and is thereof attainted in due form of law, and after this treason or felony, is pardoned by a general pardon; hereby the foundation it self, viz. the treason or felony, being by authority of Parliament discharged and pardoned, the attainder (being builded thereupon) cannot stand, but may be falsified and avoided by plea, for he hath no other remedy by writ of Error or otherwise.

In the County of Warwick there were two brethren: the one having issue, a daughter, and being seised of lands in fee, devised the government of his daughter and his lands, untill she came to her age of sixteen years, to his brother, and died. The Uncle brought up his niece very well both at her Book and Needle, &c. and she was about eight or nine years of age: her Uncle for some offence correcting her, she was heard to say, Oh good Uncle kill me not. After which time the child after much inquiry could not be heard of. Whereupon the Uncle being suspected of the murder of her, the rather for that he was her next Heir, was upon examination Anno 8 Jac. Regis committed to the Gaol for suspicion of murder, and was admonished by the Justices of Assize to find out the Child, & thereupon they bailed him until the next Assizes. Against which time for that he could not find her, & fearing what would fall out against him, he took another child as like unto her both in person and years as he could find, and apparelled her like unto the true child, and brought her to the next Assizes, but upon view and examination, she was found not to be the true child: and upon these presumptions he was indicted, found guilty, had judgement, and was hanged. But the truth of the case was, that the Child being beaten over night, the next morning when she should go to school ran away into the next County, and being well educated was received and entertained of a stranger: and when she was sixteen years old, at what time she should come to her land, she came to demand it, and was directly proved to be the true child. Which case we have reported for a double caveat: first to Judges, that they in case of life judge not too hastily upon bare presumption: and secondly, to the innocent and true man, that he never seek to excuse himself by false or undue means, lest thereby he offending God (the author of truth) overthrow himself, as the Uncle did.

Falsifying concerning goods.

Bracl. lib. 3. f. 128,
129. a. Brit. ca. 12.
fol. 20.
3 E. 3. forfeit 25.
22 Ass. 96.
13 H. 4. 13.
44 H. 7. 18.
b 3 E. 3. cor. 296,
& 344.
c 47 B. 3. 26.
13 E. 4. fo. 8. a.
Travers de char-
rell al common
ley.
d 27 Ass. p. 50.
41 Ass. p. 13.
44 Ass. p. 16.
Lib. 5. fo. 111.
Foxlves case.
e Bracl. 3. f. 129. a.
43 E. 3. 18.
7 E. 4. 17. a.
per Cheke. 45. Ass.
p. 9. Stanf. pl.
cor. 284. d.

If A be indicted before the Coroner for the death of another, and that A fled for the same; hereby are all the goods and chattels of A forfeited which he had at the time of the verdict given: and this cannot be falsified by traverse. For if the party be arraigned upon the same indictment before Justices of Gaol-delivery, and is by verdict acquitted of the felony, and that he did not flee for the same; yet he shall forfeit his goods and chattels, but yet such a fugam fecit may be falsified by matter in law; for if the indictment be void or insufficient, there is no forfeiture. But if a man be indicted before Justices of Oier and Terminer, and is acquitted by verdict, and they find further that he fled for the same, his goods are forfeited which he had at the time of the verdict given; and it being also found in particular what goods he then had, that may be traversed by any that had property in those goods.

There is also a fugam fecit in law. As if a man be indicted or appealed of felony, and process continued against him, upon his default of appearance, and an Origant awarded against him, whereupon he appeareth, albeit he be after acquitted of the felony, yet all his goods and chattels are forfeited by the awarding of the Origant upon this fugam fecit in law. But this may be falsified by matter in law: for if the Indictment or writ of Appeal be insufficient, or error be in the process or Origant, the same may be avoided by exception, and no forfeiture of goods. And there is no book to warrant the opinion of Justice Stanford

ford in this case: for in 43 E. 3. the original writ was good. Quod adooto: non ut arguam, sed ne ipse arguar. And also by matter in deed: for he may excuse his absence, as if he were in prison or beyond the sea at the time of the Erigent awarded, or if the King before the Erigent doth pardon him.

A. is indicted of Petit Larceny, and upon his trial is found not guilty, and that he did sive for the same: he shall forfeit his goods. And so it is if an Erigent be upon such an Indictment awarded against him: but he may falsifie the same to free him of the forfeiture of his goods by such means as is aforesaid. See the first part of the Institutes, Sect. 745. fol. 391. a.

Hæ leges vitam vestram (generosa Juventus)

Instituunt, quæ sunt fugienda sequendaque monstrant.

30 H. 6. tit. for-
feit. 31. 19 E. 3.
ibid. 19. 223.
45 E. 3. Ass. 9.

8 E. 1. cori. 406.

CAP. CV.

Of Pardons.

VW^E have spoken of the royall and establishing vertue of Justice: royall and establishing I say, because *Justitia firmatur solium*, by Justice the Royall Throne is established. We are now to speak of his Mercy: for the same Holy Spirit saith, *Misericordia & Veritas custodiunt Regem, & roboratur Clementia Thronus ejus*. Mercy and truth preserve the King, and by clemency is his Throne strengthened. And hereupon is the law of England grounded. *Non solum sapiens debet esse Rex, sed & misericors, ut cum sapientia misericorditer sit justus, &c.* Quibus tamen & qualiter est miserendum, doceant cum merita vel immerita personarum, &c. Of this Royall vertue we shall speak the more willingly, for that (as it hath appeared before in the Chapter of Sanctuary) all Sanctuaries and places of Refuge for safeguard of life are taken away. And where Bracton in the same place speaking of the Kings mercy saith, *Nihil tam proprium est imperii quam legibus vivere*, it is to be observed, that the lawes of this Realm have in some sort limited and bounded the Kings mercy, as shall appear hereafter. And soasmuch as his mercy is conveyed unto his Subjects by his pardons, we shall now speak thereof, being led thereunto by the Book in 9 E. 4. where it is holden *A chescun Roy appent per reason de son office a faire justice & grace; justice in execution des leyes, &c. & grace de grantier pardons, &c.*

A Pardon is a work of mercy, whereby the King either before attainder, sentence or conviction, or after, forgiveth any crime, offence, punishment, execution, right, title, debt or duty, Temporal or Ecclesiastical. All that is forfeited to the King by any attainder, &c. he may restore by his Charter: but if by the attainder the blood be corrupted, that must be restored by authority of Parliament.

We call it in Latin *Perdonatio*, and derive it à *per* & *dono*: *per* is a Proposition, and in the Saron tongue is for or vor; as to forgive is thoroughly to remit, and so forthink is to repent, and sofbear is to bear with patience, as it is said, *Leve est ferre, perferre grave*.

All pardons of Treason or Felony are to be made by the King, and in his name only, and are either general or special. All pardons either general or special are either by Act of Parliament (whereof the Court in some cases shall take notice) or by the Charter of the King, (which must alwaies be pleaded.) And these again are either absolute, or under condition, exception, or qualification:

Prov. 16. 11.

Prov. 20. 18.

Bract. lib. 2. fo.

9 E. 4. 2. a.
a Seneca lib. de
Clementia, ca. 24.
Remissius impi-
ranti melius pa-
retur.

b See the first
part of the Inst.
Sect. 1. fo. 8.
& Sect. 646, 647.
See after cap. Re-
stitution.

* Rot. Par. 17 R. 2.
nu. 11, &c.
c 27 H. 8. cap. 4.
Hil. 29 E. 1. co-
ram Rege, Heref.
Jo. fil. Philippi
Perpoint.
1 H. 4. fo. 37.
27 H. 6. proleg.
57.

for some of those pardons last mentioned the party may have a writ of allowance, or take an averment in certain cases; in others the party may be aided by averment only, where no writ of allowance doth lie.

11 H. 4. fol. 41.
28 H. 8. Dier 28.
3 Mar. ibid. 200.
26 H. 8. fol. 7.
There is a very
general and abso-
lute pardon.
Rot. Parl. 15 H. 6.
nu. 31. 33 H. 6.
nu. 29, &c.

* This is put but
for an example;
but care must be
taken, that what
general pardon
soever be pleaded,
the first clause of
the pardon of dis-
charge, &c. be
truly alleged.
For the exposition
of general words,
See L. 5. fo. 47.
Littletons case.
Ibid. fo. 46.
Frandylns case.
Ibid. fo. 48. Dry-
woods case.
Ibidem 49. b.
Witrals case.
Lib. 6. fo. 79, 80.
Sir Edw. Fittons
case. Li. 6. f. 13. b.
Li. Kelw. 8 H. 8.
187. Ibid. 10 H. 8.
fo. 198. a. ter.
* These aver-
ments (as you
perceive) may be
taken without any
writ of allowance.
8 E. 4. 3. 4 H. 7. 8.
Lib. 8. fo. 68.
Trollops case.

Vid. lib. 6. fol. 13,
14. in Arundels
case, A case of
Burton.

Hil. 29 El. the
resolution of all
the Justices.

Hil. 26 E. 3. Co-
ram Rege, Rot. 21.
Wiltes.

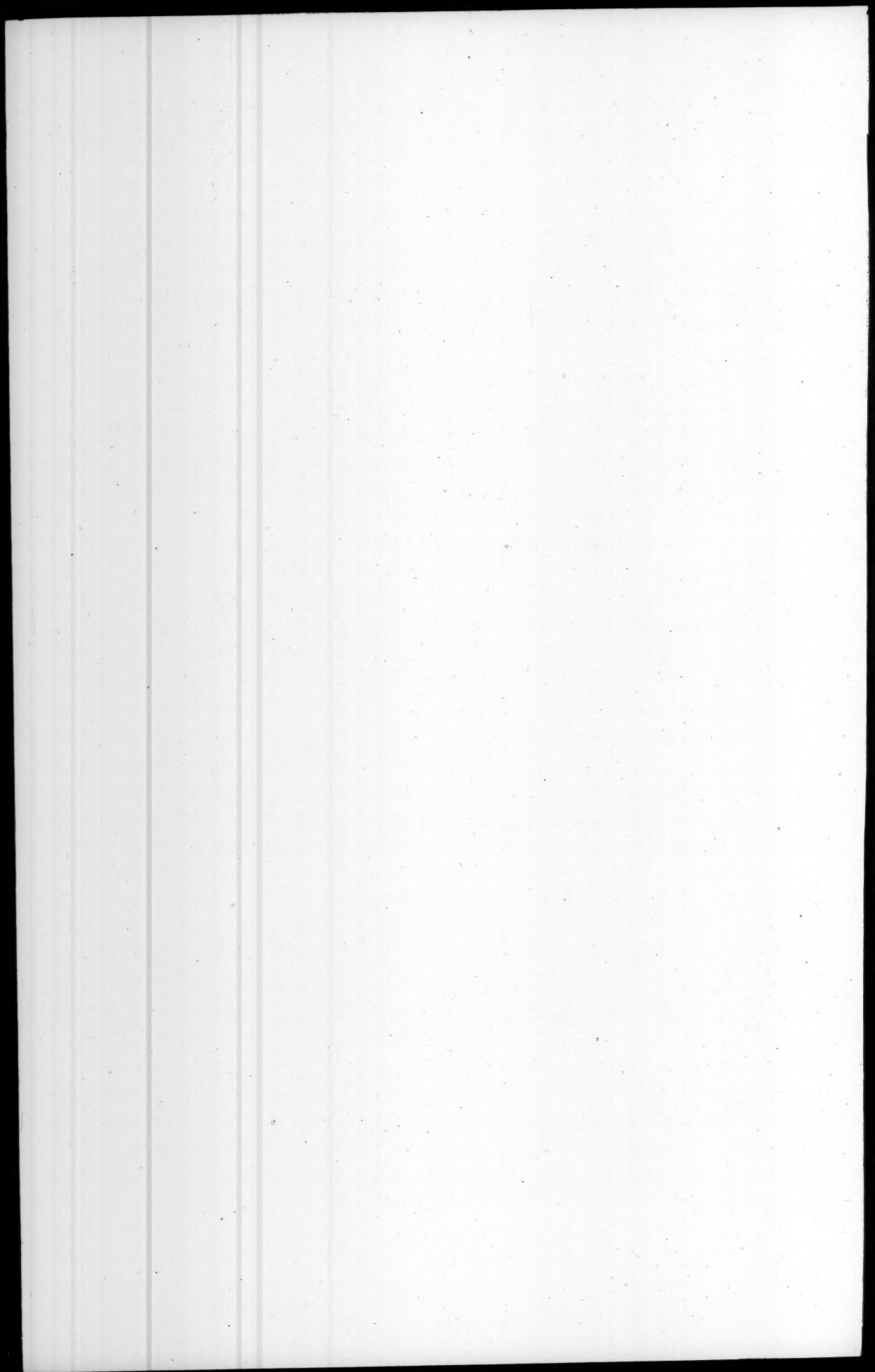
And first of general pardons. General pardons are by Act of Parliament: if any of these pardons be general and absolute, the Court must take notice of them, though the party plead it not, but would waive the same. But in these dates the general pardons have so many qualifications and exceptions of offences and things, and of persons also, that the Court cannot take notice of them, neither can the party take benefit or advantage thereof, unless he plead it. And for that it may concern the safety and quiet of many a Subject, we have expressed the form of the pleading of a general pardon, and have set it down here in Latin: but if the offence be objected in the Star-chamber, or any other English Court, then it must be pleaded in English.

Et prazd' A. per B. Attornatum suum venit, &c. (or in propria persona) et dicit quod dominus Jacobus rex nunc ipsum A. occasione prazmissa impetere seu occasionare non debet: quia dicit, quoddam per quemdam Actum in Parlamento dicti domini regis nunc tenet' apud Westm' in com' Mid' nono die Februarii anno regni sui septimo, inter alia, inactitat' & stabilitum existit autoritate ejusdem Parliamenti, * quoddam omnes & singuli subditi dicti domini regis, tam spirituales quam temporales, hujus regni Angliæ, Walliæ, Insularum Jernsey & Garnsey, & villæ Barwic. hæredes, successores, executores et administratores sui, & eorum quilibet, ac omnia & singula corpora aliquo modo corporata, civitat', burgi, comitat', Riding, Hundred, Lath, Rape, Wapentag', vill', villar', Hamlet' & Tithing, & eorum quilibet, ac successor & successores eorum, & cujuslibet eorum, autoritate ejusdem Parliamenti acquiescerentur, perdonarentur, relaxarentur, & exonerarentur versus dictum dominum Regem, hæredes & successores suos, & quemlibet eorum de omnibus prodicionibus, felonis, offensis, contempt', transgress', inrationibus, injuriis, deceptionibus, malegesturis, forisfacturis, penatitibus, & summis pecuniæ, pœnis mortis, pœnis corporalibus & pecuniariis, & generaliter de omnibus aliis rebus, causis, querelis, sectis, judiciis, & executionibus in prædicto Actu non exceptis, neque forpris', quæ per ipsum dominum regem aliquo modo, seu per aliquem modum perdonari potuerunt ante & usque nonum diem Novembris tunc ultim' præterit' ante editionem Actus prædicti, cuilibet, aut alicui suorum subditorum, corporum corporat', civitat', burgorum, comitat', Riding, Hundred, Lath, Raparum, Wapentag', villæ, villar', & Tithing, vel aliquorum aliorum, prout in Actu prædicto plenius continetur. Et idem A. dicit quoddam * offensa prædicta versus ipsum in forma prædicta objecta non est in Actu prædicto excepta, neque forprisata; et quoddam ipse est, & tempore editionis Actus prædicti fuit subditus & ligeus dicti domini regis nunc natus sub obedientia sua, videlicet apud Westm' prædict', quodque ipse non est aliqua persona in Actu prædict' except', neque forprisat'. Et hoc paratus est verificare: unde non intendit quoddam dictus dominus rex nunc ipsum A. occasione prazmissa impetere seu occasionare velit, unde petit judicium, et quoddam ipse de prazmissis prædict' exoneraretur, & quoddam generalis pardonatio prædicta ei allocatur, &c. See before cap. of falsifying of Attainders.

By the generall pardon of 28 El. all felonies are pardoned, Burglary excepted. Hil. 29 El. it was resolved by all the Justices, that a man being attained of Burglary was excepted, for the Burglary remains, and is made more apparent by the attainder, and the offence of Burglary is the foundation.

The most beneficial general pardons for the Subject were those of the fifth and thirtieth years of the reign of Queen Elizabeth, as by comparison of those with others will to the judicious Reader easily appear. The best general pardon in all King James time, was that of the 21 year of his reign, as by comparison of that with any of his former will evidently appear, and were too long here to be rehearsed.

And now of particular pardons. No particular pardon, be it at the Coronation or any other, of any offence or offences whatsoever, that is absolute without any



any condition, &c. need any writ of allowance; but when the pardon is conditionall by force of the Act of 10 E. 3. cap. 2. there a Writ of allowance out of the Chancery, testifying that the condition is performed, viz. surety found according to that Act, may be had, or the party may plead the finding of surety, &c. and vouch the Record.

The most large and beneficial pardons by Letters Patents that we have read and do remember, were that to William Wickham Bishop of Winchester (for good men will never refuse God and the Kings pardon, because every man doth often offend both of them) and that other to Thomas Woolsey Cardinal, which are learnedly and largely penned.

But let us turn our eye to ancient Charters of pardon, and consider well of them.

Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitæ, Omnibus balivis & fidelibus suis, ad quos præsentēs literæ pervenerint, Salutem. Sciatis quod pro bono servicio quod Johannes Champrona de Thornton in Pickeringis in partibus Scotiæ nobis impendit, perdonavimus ei sectam pacis nostræ, quæ ad nos pertinet * pro morte Isabellæ, quondam uxoris suæ, unde indictatus est, & firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto, si quis versus eum inde loqui voluerit. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Roukesburge, nono die Febr. anno regni nostri tricesimo.

Edwardus Dei gratia Rex Angliæ, Dominus Hiberniæ, & Dux Aquitanæ, Omnibus balivis & fidelibus suis ad quos præsentēs literæ pervenerint, Salutem. Sciatis quod pro bono servicio quod Galf. filius Warin in partibus Scotiæ impendit, perdonavimus eidem Galfro sectam pacis nostræ, quæ ad nos pertinet de homicidiis, roboriis, latrocinis, fractionibus domorum, felonis & aliis transgressionibus contra pacem nrām in regno nrō factis, unde indictatus est, & similiter transgressionem quam fecit ab Ecclesia de VVatford, in qua aliquamdiu pro timore inimicorum suorum se tenuit fugiendo, & se secundum legem & consuetudinem regni nostri Justiciar non permitiendo, & etiam ulagariam, siqua in ipsum ea occasione fuerit promulgata, & firmam pacem nostram ei inde concedimus. Ita tamen quod stet recto in curia nostra, si quis versus eum loqui voluerit de homicidiis, roboriis, latrocinis, fractionibus, felonis & transgressionibus prædictis. In cuius rei testimonium has literas nostras fieri fecimus patentes. Teste me ipso apud Linūscu vicefimo secundo die Januarii, anno regni nostri tricesimo, per breve de privato sigillo.

It appeareth by this Record, that the said Jeffry was indicted for the death of a man, and of divers Burglaries and Felonies, and being thereupon arraigned prayed his Clergy, sed salvo sibi privilegio clericali posuit se super patriam, and was found not guilty, &c. in the proceeding whereof there was manifest error, and obtained the pardon. Herein divers things are observable: first, that the pardon is de * homicidiis, and not de murdris, neither have we seen any pardon of murder by any King of England by expresse name. Secondly, by these ancient words the King doth pardon sectam pacis nostræ, quæ ad nos pertinet de homicidiis, &c. & firmam pacem nostram ei inde concedimus. This secta pacis is by indictment; which is the Kings suit, and as it were his declaration. Thirdly, that the King of ancient time did not pardon homicidium, &c. but sectam pacis nostræ quæ ad nos pertinet de homicidiis, &c. yet when he pardoned and released the suit or mean, viz. sectam pacis, &c. the offender was discharged of the homicide it self, in diebus illis, but at this day the offence it self is pardoned, which is the surest way.

The King brought an action of debt upon an obligation, the Defendant pleaded non est factum, and at a Nisi prius it was found the deed of the Defendant; and before the day in bank, the King pardoned the Defendant all debts, querels, &c. and after the King had judgement, and sued out execution, and the Defendant came and pleaded the pardon, and it was adjudged that in the Kings case he might plead the same, though he had no day in Court, because he could not have an Audita querela, or a Scire fac against the King, and there-
fore

3 H. 7. 7. a. this statute expounded and this Act extend to felony, and not to treason. Rot. Pat. 21 Julii Anno 1 R. 2.

Rot. Pat. 12 Feb. 21 H. 8. great offences need great pardons, little offences are soon forgiven.

Hil. 29 E. 1. Coram Rege, Hereford, Johannes fil. Ph. Perpoint, &c.

* It appeareth by the Record that he killed her per infortunium.

Delib. Gaolæ de Windesore, coram Hugone de Braund, & Johanne Neprunt, die Jovis proximi post claus. Pasc. Anno 25 E. 1.

* For this word Homicide see in the Chapter of Murder. See Hil. 31 E. 3. Coram Rege, Rot. 7. Northumb. 9 E. 4. 28.

8 H. 4. fo. 22. Lib. 6. fo. 13. b.

34 H. 6. 3. a.
35 H. 6. 1. a.
11 H. 7. 10.
Li. 6. f. 79. l. 8. 68.
Lib. Kewl.
8 H. 8. fo. 187.
2 R. 2. 4. b. simile

* Pl. Com. f. 402.
Coles case.
37 H. 6. fo. 25.
Quatermain
case. Lij. fo. 49.
Vaughans case.
Li. 6. fo. 13. *Cases*
de pardon.
20 El. Dier 135.
Exod. 25, 12, 13.
14. Dent. 19. 13.
Non misereri
ejus, &c.
42 E. 3. c. 2.
14 E. 3. ca. 14.
10 E. 3. ca. 2.
b 2 E. 3. c. 2.
4 E. 3. ca. 13.
Rot. Par. 13 E. 3.
nu. 6.
c 27 E. 3. c. 2.
Trin. 30 E. 1.
Rot. 1. Coram
Rege, London.
Anno 29 E. 1. A
pardon of death,
ad instantiam Jo-
han. Butecourt.
Mic. 33 E. 1. Co-
ram Rege, Ro. 65.
a pardon ad re-
quisitionem H.
de Bohun, Count.
Heref. & Essex.
d 13 R. 2. sta. 2. c. 1.
16 R. 2. cap. 6.
9 E. 4. fo. 26. b.
e 1 E. 3. f. 24.
f 8 H. 6. 20.
4 E. 4. fo. 10.
g Li. 6. fo. 15.
9 E. 4. 26. b. per
Billing Chief
Justice.

b Eccles. 8. 11.

i Regula.
Maledictus est
qui peccat sub spe.

Genes. 9. 6.
Num. 35. 33.

Bract. l. 3. f. 133.

fore if he could not plead it, he should be without remedy; but against a common person he could not plead it, because he ought to have an Audita querela, or a Scire fac. And in this case it is observable, that albeit by the judgement a new title to the said debt is accreted to the King of Record after the pardon, the obligation at the time of the pardon being but a matter in fact, yet so that the obligation was the * foundation of the debt, and the matter whereupon judgement was given, and by the pardon the debt due by the obligation was extinct, the judgement thereupon cannot binde, but is to be avoided by pleading the pardon.

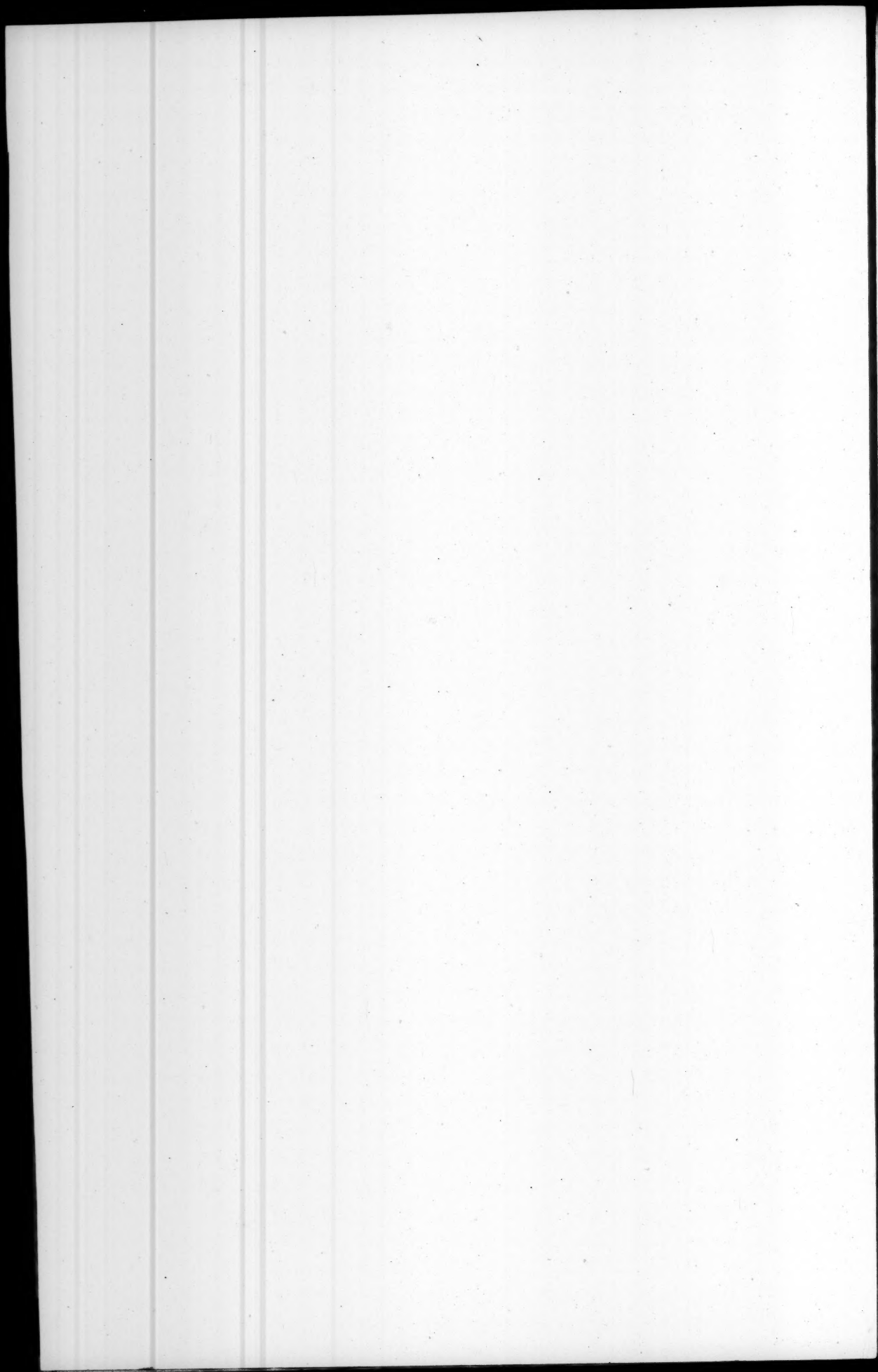
What things the King may pardon, and in what manner, and what he cannot pardon, falleth now to be treated of.

In case of death of man, robberies and felonies against the peace, divers Acts of Parliament have restrained the power of granting Charters of pardons. First, that no such Charters shall be granted but in case where the King may do it by his oath. Secondly, that no man shall obtain Charters out of Parliament; and accordingly in a Parliament Roll it is said, [For the peace of the Land it would much help, if good Justices were appointed in every County, if such be let to mainprize do put in good sureties, as Esquires or Gent. and that no pardon were granted but by Parliament.] Thirdly, for that the King hath granted pardons of felonies upon false suggestions, it is provided, that every Charter of felony which shall be granted at the suggestion of any, the name of him that maketh the suggestion shall be comprised in the Charter, and if the suggestion be found untrue, the Charter shall be disallowed. And the like provision is made by the statute of 5 H. 4. cap. 2. for the pardon of an Approver.

Fourthly, it is provided that no Charter of pardon for murder, treason, or rape, shall be allowed, &c. if they be not specified in the same Charter.

Before this statute of 13 R. 2. by the pardon of all felonies, treason was pardoned, and so was murder, &c. At this day by the pardon of all felonies, the death of man is not pardoned. These be excellent laws for direction, and for the peace of the Realm. But it hath been conceived, (which we will not question) that the King may dispense with these laws by a non obstante, be it general or speciall, (albeit we finde not any such clauses of non obstante, to dispense with any of these statutes, but of late times.) These statutes are excellent instructions for a religious & prudent King to follow, for in these cases, *Ne sumus potestatis regis est posse quantum velic, sic magnitudinis est velle quantum possit.* Whereof you may read more in Justice Stanford, lib. 2. cap. 35. in divers places of that Chapter, of his grave advice in that behalfe. Doubt certain it is, that the Word of God hath set down this undisputable generall rule, *Quia non profectur cito contra malos sententia; filii hominum sine timore ullo perpetrare mala.* And thereupon the rule of law is grounded, *Spei impunitatis continuum affectum tribuit delinquendi: Et venia facilitas incendium est delinquendi.* This is to be added, that the intention of the said Act of 13 R. 2. was not that the King should grant a pardon of murder by expresse name in the Charter; but because the whole Parliament conceived, that he would never pardon murder by speciall name for the causes aforesaid, therefore was that provision made, which was (as in other cases I have observed) grounded upon the law of God. *Quicumque effuderit humanum sanguinem, fundetur sanguis illius; ad imaginem quippe Dei creatus est homo. Nec aliter expiari possit, nisi per ejus sanguinem qui alterius sanguinem effuderit.* And the words of every pardon are after the recitall of the offence, *Nos pietate moti, &c.* See before in the Chapter of Murder, and in the Second part of the Institutes, Stat. de Glouc. ca. 9. and the Register fo. 309. pardon of the King, *De morte per infortunium, se defendendo, vel per lunaticum, vel per furiosum.*

By the ancient and constant rule of law, *Non poterit Rex gratiam facere eum injuria & damno aliorum: quod autem alienum est, dare non potest per suam gratiam.*



In an appeal of death, robbery, rape, &c. the King cannot pardon the Defendant, for the Appeal is the suit of the party, to have revenge by death: and whether the Defendant be attainted by Judgment, &c. or by outlawry, the pardon of the King shall not discharge the Defendant. * In an Appeal, the Defendant wages battell, the Plaintiff counterpleads, so that the Defendant, brake prison; if the King pardon the breaking of prison, the counterplea failes. Note the breaking prison is a collateral act: and yet in others cases at the onely suit of the party, when the Defendant either by the Common law, or by any statute (besides the restitution, or dammage of the Plaintiff) is thereby also to have an exemplary punishment, the King may pardon the same. For example, In an attaint by A. against the party, and the Petit Jury; against the party, to have restitution, this the King cannot pardon: against the petit Jury, by the Common law that they should lose liberam legem, their wives and children cast out of their houses, their houses waisted, their trees prostrated, their Meadows ploughed up, their goods and chattels seised, and their bodies taken; this the King may pardon, because it is a punishment exemplary to deter others, and tendeth not to the restitution or satisfaction of the Plaintiff.

How to take an example upon a statute. De pueris masculis sive femellis (quorum maritragium ad aliquem pertineat) raptis & abductis, si ille qui rapuit non habet jus in maritragio, licet postmodum restituat puerum non maritatum, vel de maritragio satisfecerit, puniatur tamen pro transgressione per prisonem duorum annorum. In this case the party being satisfied, the King may pardon the imprisonment by two years, so that was added as a punishment exemplary, puniatur, &c. And this doth notably appear by a Charter of pardon which King E. 2. made after this statute. Rex de gratia sua speciali perdonavit Goditham, quæ fuit uxor Roberti de Waldisch, id quod ad ipsum pertinet, de transgressione quam ipsa Goditha fecit Agathæ, quæ fuit uxor Johannis de Waldisch de Ellam, rapiendo & abducendo Johannem filium & heredem Johannis de Waldisch infra ætatem existentem, cujus maritagium ad ipsam Agatham pertinet, unde ipsa Goditha coram domino E. quondam rege Angliæ patre ipsius regis convicta fuit, & per considerationem Curie dicti patris prisonem adjudicata per biennium ibidem moratura, & etiam tempus imprisonmenti quod adhuc restat de biennio prædicto. Ideo vult idem Rex quod præfata Goditha * de eo quod ad ipsum pertinet pro transgressione prædicta sit quæta, & quod ad prisonem prædictam, si pro eo quod ad ipsum regem inde pertinet, & non alia de causa detineatur in eadem, deliberetur. Teste Rege apud Westm' 8. die Maii anno regni sui primo. Ideo ipsa Goditha inde quæta quoad hoc quod ad dominum regem inde pertinet, &c.

See more of this matter, 3 El. Dier 201, 202. 9 El. Dier 261, Musgraves case. 16 El. Dier 323. Taverners case.

The Defendant in an Appeal of murder upon not guilty pleaded, was found guilty of man-slaughter: and it was resolved by the Justices upon conference between them, that the Queen might pardon the burning of the hand, so that is no part of the judgment at the suit of the party Plaintiff in the appeal, but it is a collateral and exemplary punishment indicted by the Statute of 4. H. 7. cap. 13.

In some actions wherein the subject is sole party (as appeareth by that which hath been said) some things the King may pardon: so on the other side, where the King is sole party, yet some things there be that he cannot pardon. As for example, For all common nuisances, as for not repairing of bridges, high-ways, &c. the suit (for avoiding of multiplicity of suits, which the law abhorre, and that nulli magis cueri rempublicam creditum est quam regi) is given to the King onely, for redresse and reformation thereof: but the King cannot pardon or discharge either the nuisance, or the suit for the same; so, as Bracton saith, Non poterit Rex gratiam facere cum injuria & damno aliorum. See Glanvill li. 7. cap. 17. vers. finem.

I i

The

11 R. 2. Ch. 17.
2 R. 3. fo. 8.
See 4 Mar. 1.
Dier 133.
* 2 E. 3. Cor. 134.

13 E. 4. 1. 2.

W. 2. ca. 35.
Anno 13 E. 1.

Palch. 34 E. 1.
Corā Rege, Rot.
30 Ranc. In Ravishment de gard.

See the First part
of the Institutes.

W. 2. ca. 35.
* Nota de eo
quod ad Regem
pertinet.
Anno 1 E. 2.

Trin. 40 El. corā
Rege in appeal
de murdo, Inter
Shugborough &
Buggings.
Li. 5. fo. 50. & 119.
b. 15 H. 7. 9.
4 H. 7. ca. 13.

3 E. 3. Ass. 445.
16 E. 3. Grant 53.
35 H. 6. 29. per
Fortescue.
37 H. 6. 4. b.
Pl. Com. 487. in
Nichols case.

4 E. 4. fo. 4. 12.

11 H. 4. 43.

37 H. 6. 4. b.

1 H. 7. 10. b.

1 H. 7. 3.

37 H. 6. 4.

See before ca. 88.

Against vexatious Relators, &c. in fine.

* 3 H. 8. c. 12, &c.

Lib. 5. fo. 50.

Buggins case.

Eodem li. fo. 51.

Hals case.

4 Prov. 20. 28.

Misericordia & veritas custodiunt regem.

69 E. 4. 28.

19 E. 3. Cor. 124.

6 E. 4. 4. per Cheke.

11 H. 4. 16.

c Lib. 6. fo. 13.

F. N. B. 215. c.

9 H. 5. 14. 15.

F. N. B. 269.

20 El. Dier 135.

Lib. 6. fo. 13. 14.

Li. 5. fo. 51.

Hals case.

Regist. 67.

Mich. 37 & 40 El.

Resolution of the

Justices concern-

ing Pardons and

Licences of Alien-

nation and the

pleading of them,

&c.

29 Aff. pl. 38.

46 E. 3. 33.

Pl. Com. 398.

7 E. 6. Tir.

Estop. Br. 222.

The Customer, albeit the bond and surety be made to him for the importing of Bullion according to the Statute of 14 E. 3. cap. 1. yet cannot he release it, quia pro bono publico. If one be bound in a recognisance, &c. to the King to keep the peace against another by name, and generally all other pledges of the King; in this case, before the peace be broken, the King cannot pardon or release the recognisance, although it be made only to him, because it is for the benefit and safety of his subjects.

After an action popular be brought, *nam pro domino Rege quam pro seipso*, according to any Statute, the King can discharge but his own part, and cannot discharge the Informers part, because by the bringing of the action he hath an interest therein: but before action brought, the King may discharge the whole, (* unless it be provided to the contrary by the Act) because the Informer cannot bring an action or information originally for his part only, but must pursue the Statute: and if the action be given to the party grieved, the King cannot discharge the same.

All suits in the Star-chamber though exhibited by the party, are Informations for the King, and the King may pardon them; but after judgement (and damages, if any be given) and costs taxed, the King cannot pardon them.

And that party which informeth not the King truly, is not worthy of his grace and forgiveness, and therefore either *suppressio veri* or *expressio falsi* doth avoid the pardon.

A man commits felony and is attainted thereof, or is absured for the same, the King pardoneth him the felony without any mention of the attainder, or abjuration, the pardon is void. But if a man be attainted of burglary, and by the general pardon all felonies, &c. are pardoned (except all burglaries) the attainder and burglary be excepted, as before is said.

The King pardoneth to A. a felony whereof he standeth indicted, or indicted and attainted, &c. and in truth he is not indicted, nor attainted, &c. this is *expressio falsi*, and maketh the pardon void. A. is outlawed, and the King pardons him the outlawry, and all his goods; it is void for the goods, for he must have a grant of them.

If a man be indicted of felony, and the King reciteth the same, and pardoneth the felony contained in the indictment, and all outlawries thereupon, if any be, this is a good pardon of the outlawry, though it be doubtfully alledged, and the King not certainly informed.

The King may pardon one convict of heresy, or of any other offence punishable by the Ecclesiastical law. In all proceedings in the Ecclesiastical Court *ex officio*, the King may pardon the offence. The King may also pardon Piracy upon the sea; but by what word, and in what manner, see before in the Chapter of Piracy.

All the Justices of England being assembled at Serjeants Inn in Fleet-street, when I served Queen Eliz. as her Attorney general, I moved this case unto them. A man seized in fee of two manors, the one holden of the Queen by Knights service in Capite, and the other holden of a common person, alieneth both, and the Alienee sueth out a pardon for both, in which pardon the words are, *quod de nobis tenentur in capite per servic' militare, ut dicitur*; and after this pardon being transcribed into the Exchequer, process goeth out against the Alienee, who pleadeth the pardon, beginneth his plea thus, *Quibus lectis & auditis, idem A. queritur se colore premissorum graviter vexatum & inquietatum fore, & hoc minus iuste; quia dicit quod eadem domina regina per Literas suas Patentes, &c. and pleadeth the Letters Patents of pardon, as they be with the said clause of ut dicitur; and after he alieneth the manor which in rei veritate was not holden. The question was, whether the second Alienee may plead the truth of the matter, or ought to be concluded by the pardon and plea of the first Alienee. And first the Justices had consideration of the books in 29 Aff. pl. 38. 46 E. 3. 33. Pl. Com. 398. 7 E. 6. Tir. Estoppel. Br. 222. And in the end it was resolved by all the Justices, that the pleading of the pardon or*

of a licence, as it is, is no conclusion, for no more then the pardon or licence being not positive or affirmative, but (ut dicuntur) is a conclusion; no more is the pleading of them with the clause of (ut dicuntur) any conclusion. And conclusions shall not be wrought by inference or implication of a thing that is not directly alledged. But if the pardon or licence had been affirmative & direct without the clause, ut dicuntur, it had been a conclusion; and so had the pleading thereof been also. Lastly, it was resolved, that in case of the pardon or licence with the clause, ut dicuntur, if the party confesse the tenure that pleads the same, as to say, Bene & verum est, that the land is holden by knights service in Capite, and plead the pardon or licence, this shall conclude: and some of the Barons said, that according to these resolutions it hath been used in the Exchequer, and many precedents be there accordingly: and by these resolutions the Books abovesaid shall the better be understood.

If the King release to A all debts, and in truth A and B be indebted, this shall not discharge B: but otherwise it is in the case of a Subject, for in that case the release to one discharge both.

If one be indebted to the King, if the King pardon or release the debt, the action and suit for the debt is discharged; and if he pardon or release the action and suit, the debt is discharged: and so it is in both these cases in the case of a Subject.

A man is indicted of trespass and outlawed at the suit of the King, Rex pardonavit utlagariam in eum promulgat, & quicquid ad eum pertinet: notwithstanding the defendant shall make fine, for it seemeth that these words, quicquid ad eum pertinet, without any reference, are too generall to dispense with the fine.

We finde also a discharge of further proceeding directed to the Judges of the Court, &c. not by any pardon of the offence, but by the Kings acknowledgement under the Great Seal of the parties innocency, with commandement to the Judges, that in the former proceedings and process, &c. they shall altogether surcease: whereupon the Court will award that the party shall go fine die, and that there shall be no further proceeding against him. As taking one example for many: VVilliam de Mekon Archbishop of York was accused in the Kings Bench coram Rege & concilio suo, in Anno 3 E. 3. for adherency to Edmond Earl of Bent in his treasons; whereunto the Archbishop pleaded not guilty: and after two Writs of Venire fac. awarded, the King directed his Writ under the Great Seal to the Judges of the Kings Bench, to this effect: Licet venerabilis pater VVillielmus Archiepiscopus Eborum, & Stephanus London Episcopus, per diversa bria nostra coram nobis ad sectam nostram implacitentur de eo quod ipsi Edmundo nuper comiti Kantie adhassisse debuerant: Quia tamen predicti Archiepiscopus & Episcopus de adhassione predicta omnino immunes reputamus, Vobis mandamus, quod placitis predictis coram nobis ulterius tenen' omnino supersedeatis. Teste me ipso apud Westm. 12 die Decembris Anno Regni nostri 4. The award of the Court that is given thereupon is very observable, viz. Cujus brevis pre-textus, consideratum est, quod predicti Archiepiscopus eat in fine die, &c. Et ulterius non procedatur versus eum.

Stephen Gravesend Bishop of London was charged with the same offence in Parliament, Anno 3 E. 3. whence by order of Parliament the matter was referred to the Kings Bench to be tried, where he pleaded not guilty, & after was discharged ut supra, by the same writ. These men (if may be) thought that the taking of the pardon should be an implied confession of the fault, & therefore went a new way: but no man that is wise and well advised will refuse God and the Kings pardon, how often soever he may have it; for there is no man but offendeth God and the King almost every day, and the pardon is the safest and surest way.

If a man be indicted of felony, and found guilty, and being in prison, the King may under the Great Seal reciting the offence, &c. retain him to serve in his wars on this side or beyond the seas: this Charter he may plead, and the Court ought to allow it. As for example: Quidam indictatus de feloniam, & inde culp. dicit quod Rex eum conduxit, & inde producit chartam, quod Rex eum con-

34 H. 6. 3.
21 E. 4. 46.
2 R. 3. 4. lib. 5.
fo. 56.

22 Aff. pl. 372

Pasch. 4 E. 3. coram Rege, Rot. 38.

Pasch. 4 E. 3. coram Rege, Rot. 33.

Pasch. 22 E. 3. tit. cor. 239. coram Rege.

27 E. 4. 29. a. acc.
30 H. 6. 3.
See the first part
of the Institutes,
Sect. 199.
b 26 Aff. p. 46.
c 5 E. 3. cap. 12.
d Pasch. 8 E. 1. in
banco, Rot. 79.
Abbas de Burton,
&c.
e Vid. Rot. Par.
21 R. 2. nu. 12, 13,
&c.
f 36 E. 3. ca. ult.
4 R. 2. nu. 30, 31,
32.
1 H. 4. ca. 20.
2 H. 4. ca. 13.
3 H. 4. ca. 15.
4 H. 5. ca. 8.
a short and effe-
ctual pardon,
and many others.
Deut. 19. 21.

duxit in Vasc. in exercitum, & dista charta allocata fuit per curiam. But a Protection lyeth not in that case: because a Protection is a former writ, and cannot have such a recital of the truth of the case; and writs of Protection lyeth not in case of felony, nor is it to be allowed to any that is prisoner to the Court.

^b One indicted of felony, without any learned Council, obtained such a Charter of pardon which was discordant to the Indictment, and also to his name; and because the Court perceived that it was the Kings meaning, he should be pardoned, he was remanded to get a better pardon.

^c What things be requisite to a pardon of outlawry, see the Statute of 5 E. 3. cap. 12.

^d When the parties defendants appeared to the Court to be poor, and were to be amerced or fined, the Entry of ancient time was, *Pardonatur pro Jure quia pauperes.*

^e It is observed that Repells by Parliament of Pardons lately, and only obtained, have been seeds of great discontentment, and of evil event.

^f General pardons have been often granted at the Petition of the Commons, for they know best where the those wrongeth them, and wherein, and how they are to be eased.

So obvious was perjury, that by the law of God it was not to be pardoned: *Non misereberis ejus, &c.*

C A P. CVI.

Of Restitutions.

There is another work of grace and mercy, that is, when any man or woman being attainted of High Treason, Petit Treason, or Felony, (whereby the blood is corrupted, &c.) or his or her heir is restored.

And seeing we have formerly spoken how far, and to what intent in those cases the King of his grace may by his Charter of Pardon restore the party: we shall now treat of the restitution of the Delinquent, or of his or her Heirs by Parliament. Attainders ought to be had upon plain and direct evidence, (as before is said) for if the party be executed, restitution may be had of his lands, &c. but not of his life. Generally, *Restituere nihil aliud est quam in prius statum reducere.*

Of restitutions by Parliament some be in blood only, (that is, to make his relict as heir in blood to the party attainted, and other his ancestors, and not to any dignity, inheritance of lands, &c.) and this is a restitution secundum quid, or in part. And some be generall restitutions, to blood, honors, dignities, inheritance, and all that was lost by the attainder: and that is *restitutio in integrum*, with an addition sometimes, that it shall be lawfull for the party restored and his Heirs to enter, &c. Of the first you may read in Dier 10 Eliz. fo. 274. in Petition; and Rot. Par. 23 Eliz. of the Earl of Arundel, &c. Of the second you may read 15 E. 3. rit. Petition 2. 3 H. 7. fo. 13. a. 10 H. 7. 22, 23. pl. com. fo. 175. Rot. Par. 13 H. 4. nu. 20, &c. Of both of them you may read plentifully in our Books, and Parliament Rolls, and in divers of them with addition of Entry. See 1 H. 8. Kelw. 154. Sir William Odehals case. 4 H. 7. 7. Lo. Ormonds case. Rot. Parl. 11 H. 4. nu. 42. Rich. de Haslugs case, and Rot. Parl. 14 E. 4. nu. 4. Sir John Partelcues case, attainted of treason in 1 E. 4. &c.

And the reason wherefore the King may by his Charter pardon the execution, and restore the party or his Heirs to the lands forfeited by the attainder and remaining in the Crown, is, for that no person hath thereby any prejudice; but to make

See the first part
of the Institutes,
Sect. 1. fo. 8. a.
& 646, 647, 745.
Vid. cap. Pardon,
fo. 233.
* Gen. 40. 13.
Job 12. 23. 42. 10.
Restitutio secundum
quid, seu in
partem.
Restitutio in in-
tegrum.

Brit. ca. 13. fo. 23.
10 Eli. Dier 274.

3 E. 6. tit. Resti-
tution. Br. 37.

make restitution of his blood he cannot do it but by Act of Parliament, because it should be to the prejudice of others.

In chartis benignis facienda est interpretatio in fundationibus domorum religiosarum, hospitalium, & aliorum operum charitatis benignior: in restitutis magis benigna; in restitutionibus benignissima. *For it is holden in our books, that in restitutions the King himself hath no favour, nor his prerogative any exemption, but the party restored is favoured.*

King H. 3. took the lands of William de Albo Monasterio by his attainder, and granted the same to Robert de Mares with his heirs, donec eis rediderit rectis haredibus per voluntatem suam vel per pacem, and albeit at the making of this grant William de Albo Monasterio being dead, could have no respect of the attainder and corruption of blood in right of his; yet because it was to make restitution, it had most benign and unexpected honours.

William Lou Zouch of Mortimer and Eleanor his wife were to be restored to their lands of Glamor and Morgannon in Wales, the Barony of Haverly in the County of Gloucester, the Barony of Tewkesbury in the County of Gloucester, being the inheritance of the said Eleanor; who by the estate measures of Roger late Earl of March, were intitled to possess the same by fine, in consideration of ten thousand pounds: the King restored them thereto as in their former estate.

Henry Courtney Marquise of Exeter and Earl of Devon, having issue Edward Courtney, his onely Son, was attainted of High Treason by the course of the Common law in Anno 3. H. 8; and in the same year was also attainted by Act of Parliament. Queen Mary by her Letters Patents bearing date 18 Sept. Anno 1. Regis sui granted the Barons of P. and O. &c. in the County of Devon, &c. to the said Edward Courtney and his heirs: and afterwards 9. Octobris in the same year, at a Parliament then holden, the said Edward and his heirs were from thenceforth by Authority of that Act restored & enabled only in blood, as well as Son and heir of the said Lord Marquise his Father, as to all and every other collateral & lineall ancestors and ancestors of the said Edward; and that the severall attainders against the said Lord Marquise for the attainder of the said Lord Marquise be not in any wise prejudiciall or hurtfull to the said Edward or his heirs, for the corruption of the blood onely of the said Edward, but that the severall attainders and either of them be against him and his heirs for the corruption of blood onely, utterly void. Provided alwaies that the said Act, ne any thing therein contained, should not in any wise extend to give any benefit or advantage to the said Edward, ne to his heirs, to demand, claim, or challenge any Honours, Castles, &c. ne any other hereditaments whatsoever, whereunto H. 8. and E. 6. or either of them was entituled, or ought to have and enjoy by reason of the said severall attainders of the said late Lord Marquise, or of either of them. Edward Courtney died seised of the said Barons without issue, 18 Septemb. Annis 3 & 4 Ph. & Mar. and Reinold Mohun, Alexander Arundell, John Vivian the younger, John Trelawny Esq; and Margaret Buller Widow, were his collateral Cousins and Heirs: and whether the said restitution extended to the Heirs collateral of the said Edward, was by the Queens commandment referred to the consideration of the two Chief Justices Popham & Anderson, Peryam Chief Baron, and to Egerton Attorney, and to the Solicitor General. And it was resolved, that by reason of the attainder of the Lord Marquise, if there had been no Act of restitution, the Heirs collateral of the said Edward could not have inherited to the said Edward, in respect of the corruption of the blood wrought by the said attainder onely. Whereupon it was objected, that when it was enacted by the said Act of restitution, that the said Edward and his heirs should be restored and enabled in blood onely as Son and heir to his said Father, as all his ancestors lineall and collateral, that the said restitution extended only to his heirs lineall, for other heirs he could not have as long as the said attainders of the Marquise stand in force, and the words of the Act of Restitution to Edward and his heirs might be satisfied with the heirs lineall. And upon due consideration

See the first part of the Institutes, Sect. 646, 647, 745. fo. 392. verb. *Le sank est corrupt, &c.*

4 See 10 El. Dier ubi sup.

41 E. 3. s. b.

27 Aff. p. 48.

17 E. 3. 40.

5 E. 3. 66.

29 E. 3. 7.

20 Eliz. Dier 360.

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16 E. 3. Livery 30.

44 E. 3. 45.

18 E. 3. 21, 22.

24 E. 3. 29.

40 E. 3. Grant 50.

6 Mich. 8 E. 1. in

Banco, Rot. 62.

Norff.

Rot. Par. Anno

4 E. 3. nu. 18. on

the backside of

the Roll.

* An example of

restitution in

blood only.

11 H. 4. nu. 42.

13 H. 4. nu. 20.

Mic. 35 & 36 El.

consideration had of the case, it was (una voce) resolved by them all, that corruption of blood is a distinct penalty inflicted by law; and that the said Act of restitution did extend to the heirs collaterall of the said Edward (having no heirs lineall) as to the clearing and restoring of the blood, and avoiding of the corruption thereof: and that it had been sufficient if the Act had restored and enabled him in blood onely as heir to his father; thereby he and his heirs, as well collaterall as lineall, might make their descent: or resort from the Marquise (for there was the stop and corruption) and from all other the ancestors of the said Edward, lineall or collaterall, under abundance and other clause also is added, for the more manifestation thereof.

Margaret Plantagenet was Daughter to George Duke of Clarence attainted of High Treason by Act of Parliament 17 E. 4. and Sister of Edward Earl of Warwick, onely Son of the said George, and Mabel eldest Daughter of Richard Nevil Earl of Warwick and Salisbury, which Edward was attainted of High Treason in Anno 15 H. 7. before John Earl of Oxford then being High Steward of England. The said Margaret was by Act of Parliament Anno 5 H. 8. restored to the Style, State, name, title, honour and dignity of the Countesse of Salisbury, (she was the last of the surname of Plantagenet) which Act is very well penned, and worthy the reading for many respects, and the Preamble thereof, inter alia.

Bills of restitution may begin in the Parliament, either in the House of Commons, or in the Lords House.

There be also other kinds of Restitutions to be treated of amongst the Pleas of the Crown, as Restitution of goods upon an Appeal, whereof you shall read in Stanford with this addition. Vide lib. 5. fol. 110. a. 21 E. 4. 10.

And by the Statute of 21 H. 8. cap. 11. Restitution is to be granted upon an Indictment, &c. For by the Common law the party should not be restored to his goods upon an Indictment (because it is the suit of the King) albeit the enquest found that the party had made fresh suit. But Restitution was to be made upon an Appeal, which is the suit of the party.

See Stanford also fo. 167. a. b. whereunto you may adde Lib. 5. fo. 110. a. & lib. 6. fo. 80. where you shall finde, that though this Statute of 21 H. 8. speaks onely of the party robbed, yet his Executors are within the Statute, and so are his Administrators. For it is a beneficiall law, and giveth a more speedy remedy to the party robbed, &c. then the Common law gave by way of appeal, and therefore ought to be construed beneficially.

Vide the Register 68. b. that in some cases when the King ought ex merito justitiae to make restitution to the party, yet for the honour of the King the Writ saith, sine dilatione restituas de gratia nostra speciali; which derogates nothing from the right of the Subject, when right is accompanied with grace.

Lastly, there are other lawes concerning Restitutions of another kinde. As by the Statute of 8 H. 6. restitution is to be made, when he that hath an estate of inheritance or freehold is disseised by forcible entry or forcible detainer. By the Statute of 31 Eliz. there shall be no restitution by the Statute of 8 H. 6. upon an indictment of forcible entry or forcible detainer, where the defendant hath been three whole years together before the day of such indictment in quiet possession, and his estate not ended, according to the true meaning of a proviso in the said Statute of 8 H. 6. as it is declared by the said Act of 31 Elizabeth.

By the Statute of 21 Jac. Regis, such Judges, Justices, or Justice, as are enabled to give restitution of possession unto tenants of any estate of freehold, &c. shall by reason of this Act of 21 Jac. have the like and the same authority upon indictment of such forcible entries or forcible with-holdings before them duly found, to give like possession unto tenant for years, tenant by copy of Court Roll, guardians by Knights service, tenants by Elegit, Statute Merchant, or by Statute Staple.

And

Statute de 5 H. 8.

not in print.

14 R. 2. nu. 36.

4 Rot. Par. 18 E. 1.

nu. 11. of Liberties.

Stanf. pl. cor.

fo. 165; 166, 167,

186, 665, 105, 107.

F. N. B. 66. a.

b. 21 H. 8. cap. 11.

22 E. 3. cor. 460.

Stanf. 167. a. b.

Lib. 5. fo. 110.

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F. N. B. 66. a.

8 E. 2. tit. forfeiture

34.

3 E. 3. cor. 3. 65.

Vid. 40 E. 3. 42.

Lib. 5. fo. 110.

Holtens case.

8 H. 6. cap. 9.

See the second

part of the Instit.

cap. 8 H. 6. cap. 9.

31 Eliz. cap. 11.

Vide 4 Mariz.

e. Dier 141.

21 Jac. cap. 15.

By the Statute of

8 H. 6. can. 9.

See also
the Statute of
21 Jac. cap. 15.

And soasmuch as it hath ben said, no restitution ought to be made where the defendant or party indicted in case of freehold hath ben in possession by the space of three whole years, &c. they having the like and same authozity in case of tenant for years, tenant by copy of Court-Roll, and other the tenants abobe named, cannot give restitution or possession, where the party indicted hath ben in quiet possession by the space of three whole years. Now, this Act of 21 Jac. extends not to a guarden in Doccage, nor to a Guarden or Keeper of a Park: neither (as some hold) doth it extend to him that by a last Will hath an interest in lands or tenements, untill debts and legacies be paid, because certain tenants be particularly nominated, and this is casus omisus. But this being a beneficial law to restore him that right hath to his possession of lands, &c. where of he was wrongfully by force dispossessed, or by force withholden, &c. and being in like case and equal mischief, others do hold, that this Act extendeth to this case of such a devise, &c. and so it is for a tenant for a year, or for an half, or three quarters of a year.

See the Statute of 32 H. 8. cap. 3. where the particular tenant charged with more then the land is worth, may after his term expired hold over untill he be satisfied, &c. in equal case with such a devise.

* Now, there be divers precedents in the Chancery for restitution by writ to be made after execution upon a Statute Staple.

* Restitution of another kinde, whereof we remember no book-case.

Anno 25 H. 6. Execution was sued upon a Statute Staple, and for that no Certificate of the Statute, &c. appeared of Record, the Conuser had a writ of Superedeas out of the Chancery with restitution to be made; and the forme of this Writ appeareth in a Register M. S. in the Chancery.

In the case of Sir Robert Gardner in the time of Sir Thomas Bromly Lord Chancelloz, after a Superedeas granted, execution was done upon a Statute Staple, whereupon a Superedeas was granted with restitution reciting the special matter.

There is another precedent in 33 Eliz. in the case of one Carrant, (but there the writ recited no speciall cause, but pro diversis causis & considerationibus) a Superedeas with restitution was awarded.

FINIS.

THE EPILOGUE



Hus have we by the great goodness of Almighty God, *Per varios casus, per tot discrimina rerum*, brought this work concerning High treason, and other *Pleas of the Crown*, or Criminal causes, and of Pardons and Restitutions, to a conclusion; wherein (as we are verily perswaded) we have made it apparent from the lively voice of the Laws themselves, that no Country in the Chri-

stian world hath in criminal cases of highest nature laws of such expresse and defined certainty, and so equal between the King and all his Subjects, as this famous Kingdome of England hath, being rightly understood and duly executed, to the great honour of the King and of the Laws, and the happy safety of all his loving and loiall Subjects.

Now seeing *Iustitia est duplex, viz. severè puniens, & verè præveniens*, that is, Justice severely punishing, whereof we have spoken, and truly preventing, or preventing Justice, (*quæ adhuc desideratur*) for we have spoken only of the former; we will therefore at this place (for a conclusion) point at the other with a direction how it may be effected.

True it is, that we have found by woefull experience, that it is not frequent and often punishment that doth prevent like offences, *Melior est enim Iustitia verè præveniens, quàm severè puniens*, agreeing with the rule of the Physician for the safety of the body, *Præstat cautela quàm medela*: and it is a certain rule, that *Videbis ea sæpe committi, quæ sæpe vindicantur*, Those offences are often committed, that are often punished; for the frequency of the punishment makes it so familiar as it is not feared. For example, what a lamentable case it is to see so many Christian men and women strangled on that cursed tree of the gallows, insomuch as if in a large field a man might see together all the Christians that but in one year, throughout England, come to that untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed for pity and compassion. (But here I leave to Divines to inform the inward man, who being well informed *verbo informante*, the outward man will be the easilier reformed *virga reformante*.)

This preventing Justice consisteth in three things. First, in the good education of youth; and that both by good instruction of them in the grounds of the true religion of Almighty God, and by learning some knowledge or trade in their tender years, so as there should not be an idle person, or a *begger, but that every childe,

K k

male

Justice divided.

Regula.

Sic, perlege, plora.

Seneca, li. 1. De Clem. cap. 24. Non minus principi turpia sunt multa supplicia, quam medico multa funera.

Regula.

Non morbus plerisque, sed morbi neglecti curatio corpus interficit. * Deut. 15. 4.

Non erit omnino indigus & mendicus inter vos, ut benedicat tibi Dominus.

The Epilogue.

Oriofus nihil cogitat nisi de venire & venere.

See before Ca. of Pardons, fo. 236.

Pfal. 59. 10. Misericordia Domini praveniet me.
1 Maccab. 6. 27. Nisi pravenieris illis, majora quam hac facient, & non poteris eos obvinere.

3 & 4 E. 6. ca. 5. in the Preamble, *Imprimis interest reipublica, ut pax in regno conservetur, & quaecunque paci adversantur provide declinentur.* 1 Mar. ca. 12. 32 H. 8. ca. 9. See the fourth part of the Institutes, fo. 312. b.

male or female, whose parents are poor, might at the age of seven years earn their own living: for *Ars fit quod a teneris primum conjungitur annis*: and this, for the time to come, would undoubtedly by preventing Justice avoid idleness in all, (one of the foul and fatal chanel that lead into *mare mortuum*) and by honest trades cause them to become good members in the Common-wealth.

Secondly, in the execution of good laws. True it is that there be good laws already to punish idleness, but none of sufficient force or effect to set youth or the idle on work.

Thirdly, that forasmuch as many do offend in hope of pardon, that Pardons be very rarely granted, for the reasons in the Chapter of Pardons expressed.

But the consideration of this preventing Justice were worthy of the wisdom of a Parliament, and in the mean time expert and wise men to make preparation for the same, as the Text saith, *ut benedicat eis Dominus*. Blessed shall he be that layeth the first stone of this building, more blessed that proceeds in it, most of all that finisheth it, to the glory of God, and the honour of our King and Nation.

Et pergrata Deus nobis hæc otia fecit.

Optimus est patriæ jura referre labor.

Deo gloria & gratia.

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